THE DEFENSE LINE

S.C. DEFENSE TRIAL ATTORNEYS' ASSOCIATION

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PAC Golf Tournament
April 25, 2012

Trial Academy
Charleston, SC
June 6-8, 2012

Summer Meeting
Asheville, NC
July 26-28

SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION

President's Message

by Molly H. Craig

It is with great enthusiasm that I write to you as the President of the South Carolina Defense Trial Attorneys' Association. I am humbled and honored to serve this organization and to follow in the footsteps of our Past Presidents, the true giants of the South Carolina defense bar. For over seventy years, the SCDTAA has provided its members valuable benefits at all levels of education, programming, networking, amicus support, and lobbying efforts in our Legislature. During my nine years on the Board, I have served under some of the Association's most talented presidents which provided me with an education on how to serve our members by blending current legal issues with institutional knowledge. By the time an individual becomes the president of our organization, he or she has not only served on the Board of Directors but has also held the offices of secretary, treasurer, and president-elect. As compared to other organizations, our process of leadership may take longer, but it makes certain that the people leading our Association are knowledgeable about all facets of the SCDTAA. Indeed, it has been a wonderful journey and I am now excited to draw upon that education and experience as we go forward in 2012. With the great help of an outstanding Board, along with the guidance of our officers, Sterling Davies, Curtis Ott, Ron Wray and Gray Culbreath, we have been hard at work for what will surely be another terrific year for the SCDTAA.

There are many exciting opportunities and benefits available to our members in 2012. In recent years, we added a Corporate Counsel Seminar, Deposition Boot Camps, PAC golf tournament and a Construction Law CLE. These programs were highly successful and will be continued in 2012. In addition to our Trial Academy, Summer Meeting, Annual Meeting, legislative and judicial receptions, we are very pleased to host a new program entitled "Trial Superstars™". Over the years, participants in our trial academies have repeatedly requested an actual trial demonstration by experienced trial lawyers. In response to the requests, we have organized the 2012 Trial Superstars™, a live trial carried out by some of the finest trial lawyers in the country. For lawyers with limited trial experience or lawyers who have tried many cases to verdict, there is nothing more inspiring than watching a case tried by excellent, experienced lawyers. This live trial presentation will offer the opportunity to see highly effective cross-examinations of expert witnesses, the direct examination of an economist, and opening and closing statements. We have assembled an all-star faculty of trial lawyers from the defense and the plaintiff's bar and the Honorable Doyet A. Early, III will preside over the mock trial on April 13, 2012 in the Charleston County Courthouse. The mock trial will be led by a jury consultant company and tried before live jurors. We will have two juries; one drawn from Charleston County and another drawn from Hampton County. The entire trial demonstration and the jury deliberations will be videotaped for use in our CLEs throughout the year. Although live attendance sold out the first day of registration, due to the high demand, we have arranged a webcast alternative for those who still would like to watch Trial Superstars™.

The SCDTAA website has the full calendar of CLE and other events we are hosting this year. Our specialized CLE programs, as well as the programming at the Summer Meeting and Annual Meeting will focus on trial techniques and tactics designed to give our members practical, useful information to take back and use in their daily practices. Our Trial Academy will be held in Charleston on June 6-8, 2012 under the leadership of Jamie Hood and co-chairs, Jay Davis and Sarah Wetmore. Our Clerk of Court in Charleston County, Julie Armstrong, and her staff graciously agreed to allow us to use the courthouse for the mock trials as well as the two days of instruction given by experienced trial lawyers to the participants of the Trial Academy. In July, the Summer Meeting will be held at The Grove Park Inn in Asheville, North Carolina, July 26-28, 2012. The Honorable Frank R. Addy, Jr., The Honorable J. Mark Hayes, II and The Honorable Roger M. Young will be participating in our CLE program. Anthony Livoti, along with co-chairs, Bill Besley, Erin Dean and Walt Barefoot are in charge of the Summer Meeting which will be an outstanding event. Our final event of the year is our Annual Meeting scheduled for November 8-11, 2012. I am excited that our Annual Meeting will take place at a new venue for the SCDTAA – The Sanctuary at Kiawah Island. We are thrilled with the close proximity and premium accommodations of this wonderful resort. The Sanctuary was the recipient of the 2010 Forbes Five Star and AAA Five Diamond Awards. Of course, Kiawah Island is well known for the breathtaking views, world class golf courses, fine dining as well as the home of the 2012 PGA Championship. As always, the members of the state and federal judiciary are invited to our Annual

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Letter From The Editors

by David A. Anderson, Jack Riordan, and Breon Walker

"As a general rule the most successful man in life is the man who has the best information." Benjamin Disraeli (21 December 1804- 19 April 1881)

In accord with the above quote from the twice elected British Prime Minister (which equally applies to successful women), the editorial board strives to enhance our readers' success by providing useful and timely information. The *Defense Line* has earned the reputation of being a great resource to the members of the South Carolina Defense Trial Attorneys' Association. This year's editors hope to continue with the tradition of excellence by publishing three editions: this initial spring edition, along with follow-on editions in the summer and fall of 2012.

A magazine serving the South Carolina Civil Defense Bar is only as good as the contributions of its members. We welcome your feedback and assistance in providing timely and informative articles for publication; whether you are a new associate or a seasoned veteran, we welcome your input. You may notice some changes in the 2012 publication, including an increase of photographic content. For those who are handy with a camera, please submit your photos electronically to one of the editors or to Aimee Hiers. We also plan to feature two judicial profiles with each edition and will concentrate on one Circuit Court and one Federal Court Jurist. These informative profiles provide a candid look at the talented judiciary that our State enjoys. In this edition you will enjoy learning about Federal District Judge Timothy M. Cain and Eighth Circuit Court Judge Frank R. Addy, Jr.

No successful and relevant organization can thrive without taking stock of its past accomplishments and its history. At the suggestion of our Association President, Molly Craig, we have instituted a section called "Reflections." With this initial edition you will learn from Ben Moore, our first duly elected president, of how the association got its start. In future editions you will hear from others who held leadership roles in the association as they reflect back on our rich history.

2012 is shaping up to be an exciting year in our association. The Summer Meeting at the Grove Park Inn is scheduled for July 26-28. This will be a great opportunity to enjoy informative CLEs while socializing with family and friends. The Annual Meeting will be held at The Sanctuary on Kiawah Island, SC, November 8-11. You will most certainly want to attend this event, where you will be presented with instructive educational credits and an opportunity to visit with our Judiciary in a renowned resort setting. Our Association Officers are working hard to provide you with both the information and opportunities to be more successful in your practice. We appreciate those talented individuals who have contributed to this edition and encourage more involvement by all. Let us hear from you!

David A. Anderson

Jack Riordan

Breon Walker

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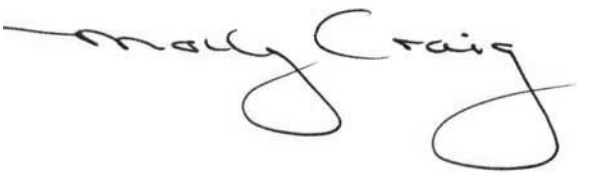
Meeting as guests of the SCDTAA. Please mark your calendars as this meeting will be one you do not want to miss. William Brown, along with co-chairs, John Kuppens and Johnston Cox, are finalizing an impressive agenda for our CLE program as well as social and networking opportunities.

The members of the Board are working diligently to ensure that our new initiatives this year, as well as all regular programming, will be successful and enjoyed by all. Our organization is fortunate to have such a talented and committed Board. Nevertheless, the Association has plenty of room for new leaders and I encourage all of our members to become involved in any aspect of the SCDTAA. I urge you to join a substantive law committee, write an article for The DefenseLine, offer to speak at one of our many CLE programs, attend our legislative and judicial receptions and of course, attend the Summer Meeting at the Grove Park Inn or the Annual Meeting at The Sanctuary. You will find that active participation in the SCDTAA is rewarding both personally and professionally.

We are all excited about the plans we have for 2012! Thank you for the opportunity to serve this prestigious organization.



SOUTH CAROLINA DEFENSE TRIAL ATTORNEYS' ASSOCIATION

THE DefenseLINE

SCDTAA Docket

Carlock, Copeland & Stair congratulates David J. Harmon and Lee C. Weatherly on being selected to join the Firm's partnership

David J. Harmon has practiced law in Charleston, SC since graduating with honors from the University of South Carolina School of Law in 2004. He has been successful in both jury trials and in appellate work, contributing to a brief that resulted in a published Supreme Court opinion affirming the summary judgment for the client. Harmon brings an environmental background to the field of law, having received his master's degree in oceanography with a concentration in wetland science and management. He has authored and contributed to several published articles and a book in the field of environmental law, detailing the role and tax incentives of conservation easements in South Carolina.

Lee C. Weatherly's practice focuses on complex civil cases involving medical malpractice, automobile and motor carrier accidents, correctional health care, constitutional law, premises liability, class action claims, commercial litigation, contract disputes and HOA liability. He has been lead counsel in over 60 jury trials and is an active member of both the South Carolina and Kentucky Bars. Weatherly has been published numerous times and is frequently asked to speak to professional groups. Lee is also the recruiting attorney for the Charleston, SC office. Weatherly received his Juris Doctor from the University of Kentucky College of Law and his Bachelor of Arts from the Centre College of Kentucky.

Collins & Lacy P.C. Named to the 2011- 2012 Best Law Firms List

Collins & Lacy, P.C. is pleased to announce the firm has been recognized in the Best Law Firms 2011-2012 list released by the U.S. News Media Group and Best Lawyers®. The business defense firm received both first and second tier ranking in numerous practice areas for both the Columbia and Greenville metropolitan areas:

The 2011 - 2012 "Best Law Firms" rankings marks the second edition of this annual analysis. "It is an honor for Collins & Lacy to be selected for inclusion in this prestigious list," said managing partner Ellen Adams. "Our firm is proud to be recognized for the work we enjoy doing for our clients." Collins & Lacy's first-tier rankings will be featured in the November issue of U.S. News & World Report's Money issue. The mission of "Best Law Firms" is to help guide referring lawyers and clients – from the country's largest companies and individuals needing corporate legal advice. These rankings showcase 9,633 different law firms ranked nationally in one or more of 75 major legal practice areas and in metropolitan or state rankings in one or more of 119 major legal practice areas.

Attorney Charles Appleby Recognized as a Top Young Leader by The State Newspaper

Collins & Lacy, P.C. attorney Charles Appleby is recognized as one of the area's top young leaders by The State Newspaper being named to this year's class of "20 Under 40." The State, coining this year's class the "next wave of leaders in the Midlands," specifically highlighted Charles' involvement in planning the successful Famously Hot New Year Celebration in January 2012. "With his tenacity and attention to every detail of the now famous Famously Hot New Year's Celebration, Charles proved all the naysayers wrong who said 'folks would not come out for a large community celebration in the dead of winter'", said City Center Partnership President and CEO Matt Kennell. "This event helped put the 'mojo' back in Main Street and will reap economic and social rewards for our community for years to come." Charles applied his legal knowledge in retail/hospitality to collaborate with city leaders such as Mayor Steve Benjamin and Chief Randy Scott, as well as local businesses and community groups like the City Center Partnership for the inaugural celebration that drew in tens of thousands of attendees from 23 different states. "We here at Collins & Lacy are proud to have attorneys like Charles who can bolster the excellent legal counsel they provide to South Carolina businesses with strong community ties and a commitment to service," said Managing Partner Ellen Adams.

Collins & Lacy Founding Partner Selected as Legal Elite

Collins & Lacy, P.C. is pleased to announce founding partner Joel W. Collins, Jr. has been recognized by his peers as a member of the Greater Columbia Business Monthly's 2011 Legal Elite. This is the second year that Collins has been selected to receive this prestigious honor. Joel Collins co-founded Collins & Lacy in 1984 as a firm that would concentrate primarily on business defense litigation. He currently chairs the firm's Professional Liability practice group. Joel's reputation in the courtroom and professional standing has led his peers to consider him one of South Carolina's preeminent attorneys, according to Martindale-Hubbell. He also is named one of the Best Lawyers in America©, one of the oldest and most respected peer-reviews in the legal profession.

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Member News cont.

Ellen Adams, Managing Shareholder of Collins & Lacy, commented, "It is nice to see Joel recognized in this special way by his peers. He serves as a wonderful illustration of Collins & Lacy's commitment to excellence in serving the businesses of South Carolina."

Collins & Lacy Founding Partners Selected for Leadership in the Law Awards

Collins & Lacy, P.C. is pleased to announce that founding partners, Joel Collins and Stan Lacy have been selected as recipients of the South Carolina Lawyers Weekly 2012 Leadership in the Law Awards. They will be recognized at the Leadership in the Law awards dinner on Thursday, March 15th at the Francis Marion Hotel in downtown Charleston. The awards were designed to spotlight those members of the legal community whose leadership, both in the legal profession and in the community, has made a positive impact on our state. The recipients were selected by a panel of judges based on their outstanding achievement in the following key areas: dedication to the legal profession, achievement in their legal career, along with mentoring and community involvement. Joel Collins, together with Stan Lacy, co-founded Collins & Lacy in 1984 as a firm that would concentrate primarily on business defense litigation.

Collins & Lacy, P.C. Attorneys Rebecca Halberg and Brian Comer Elected as Shareholders

Collins & Lacy P.C. is pleased to announce Rebecca K. Halberg and Brian A. Comer have been elected as shareholders of the statewide business defense firm.

Rebecca Halberg practices in workers' compensation, regularly appearing before the South Carolina Workers' Compensation Commission. As the newly elected President of Kids' Chance South Carolina, Rebecca continually gives back to families of workers who were injured or killed on the job. She earned her undergraduate degree in Journalism and Mass Communication from the University of North Carolina at Chapel Hill and her Juris Doctor from the University of South Carolina School of Law.

Brian Comer practices in products liability and professional liability and chairs the firm's Products Liability Practice Group. Brian was a magna cum laude graduate of the University of South Carolina Honors College in International Studies and Economics. He also served as Student Body President during his undergraduate career. Brian received his Juris Doctor from the University of South Carolina School of Law and an International Masters in Business Administration degree from the University's Moore School of Business, with a concentration in German. Brian is the founder and contributing author of The South Carolina Products Liability Law Blog, a blog for individuals and product manufacturers who are interested in this area of law.

Collins & Lacy, P.C. Attorney Elected as President of Kids' Chance of South Carolina

Rebecca K. Halberg has been elected president of nonprofit Kids' Chance of South Carolina.

Kids' Chance of South Carolina, Inc. is a nonprofit corporation developed in 1992 by the S.C. Workers' Compensation Educational Association. Its purpose is to provide financial scholarships for children of South Carolina workers killed or seriously injured in work-related accidents. "I am honored to serve in this new role as president and to continue to fulfill the mission of Kids' Chance," said Halberg. "Kids' Chance graduates are working as lawyers, doctors and nurses. It is rewarding work to help them succeed."

Collins & Lacy, P.C. Founding Partner Named Lawyer of the Year

Collins & Lacy, P.C. is pleased to announce founding partner Stanford E. Lacy has been named Lawyer of the Year for his work in workers' compensation law in South Carolina.

Best Lawyers in America, the oldest and most respected peer-review publication in the legal profession, designated Lacy as the "Columbia, SC Best Lawyers Workers' Compensation Law - Employers Lawyer of the Year" for 2012. Lacy is the only attorney in the the Columbia metro region to receive this honor. The region includes Camden, Columbia, Lexington, Newberry, Orangeburg, Sumter and West Columbia.

Steven Naifeh, President of Best Lawyers, says, "We continue to believe – as we have believed for more than 25 years – that recognition by one's peers is the most meaningful form of praise in the legal profession. We would like to congratulate Stan Lacy on being selected as the 'Columbia, SC Best Lawyers Workers' Compensation Law - Employers Lawyer of the Year' for 2012."

Founding Partner Honored with Lifetime Service Award

Collins & Lacy, P.C. and the South Carolina Workers' Compensation Educational Association (SCWCEA) are pleased to announce founding partner Stanford E. Lacy has been honored with the Lifetime Service Award.

The SCWCEA Lifetime Service Award is given by the SCWCEA Board to individuals who have contributed significantly to the success and betterment of the SCWCEA and/or the South Carolina workers' compensation system. The Board unanimously determined there was one individual that completely fit the criteria of this great designation. "Stan Lacy lives and breathes workers' compensation. His institutional knowledge of the Association and the South Carolina workers' compensation system is invaluable, and his presence and wit are infectious," said Chris Daniel, 2011 SCWCEA President and Claims Director for Companion Property & Casualty Group. The Lifetime Service Award is not an annual event. It is given sparingly

and only to those individuals who have made it their life's work to enhance the SCWCEA and/or the SC workers' compensation system.

Collins & Lacy Attorney Elected to Leadership Greenville's Alumni Association Board of Directors

Collins & Lacy, P.C. is pleased to announce Ross B. Plyler has been elected to serve on the Alumni Association Board of Directors for Leadership Greenville. Plyler is a graduate of the Leadership Greenville Class of 2011. Leadership Greenville is a program designed and facilitated by the Greenville Chamber of Commerce to help develop informed, committed and qualified leaders for Greenville County. Since the program began in 1973, there have been approximately 1,650 participants. Many alumni have served in key leadership positions within their businesses and organizations, as well as city council, county council, school board, members of Congress and judges."By serving on the Alumni Association Board of Directors, I look forward to the continuation of my active involvement in this outstanding organization and the opportunity to continue to work closely with Greenville's business leaders," said Plyler. Plyler is a senior associate with Collins & Lacy practicing in the areas of insurance coverage and transportation law. Ross is a summa cum laude graduate of Wofford College, where he received his undergraduate degree in Government and History and was a member of Phi Beta Kappa. He received his Juris Doctor from the University of South Carolina School of Law.

Gallivan, White & Boyd Attorneys Recognized as 'Lawyers of the Year'

Gallivan, White & Boyd, P.A. is pleased to announce that shareholders Gray T. Culbreath and T. David Rheney have been recognized as 2012 "Lawyers of the Year" in their respective practice areas by Best Lawyers, one of the most respected peer-reviewed publications in the legal profession. Gray Culbreath, a shareholder whose practice focuses on complex litigation and business and commercial disputes, has been named the 2012 Lawyer of the Year in Columbia, South Carolina, for "Mass Tort Litigation / Class Actions - Defendants" by Best Lawyers. Culbreath, immediate past President of the South Carolina Defense Trial Attorneys' Association, leads GWB's newly established Columbia office, along with partners John T. Lay, Johnston Cox, John Hudson, and Shelley Montague.

David Rheney, Immediate Past President of the South Carolina Defense Trial Attorneys' Association, has been named the 2012 Lawyer of the Year in Greenville, South Carolina, for Insurance Law. Rheney leads the firm's Insurance Practice Group. Attorneys honored as "Lawyers of the Year" have received particularly high ratings by their peers. Only a single lawyer in each practice area in each community is given the annual recognition.

Collins & Lacy, P.C. Receives Triple Honors in Statewide Communications Awards Program

The Collins & Lacy, P.C. Marketing Department received triple recognition for its communications programs during the 2011 Annual Palmetto Awards. The honors included an Award of Excellence in Strategic Communications, an Award of Excellence in Internal Benefits Communications, and an Award of Merit in Online and Electronic Publications. The South Carolina Chapter of the International Association of Business Communicators (IABC/SC) hosted its annual awards program, the Palmetto Awards, Tuesday November 1, 2011 in Columbia. Established in 1999, the Palmetto Awards annually recognize outstanding achievements in communications across the Palmetto State. More than 60 professionals from businesses, government entities and non-profits statewide attended this year's event, during which the Collins & Lacy Marketing Department was recognized in the above three categories.

Garlock Copeland & Stair's Blog on Insurance Coverage Recognized

Carlock, Copeland & Stair's blog, Insurance Coverage Corner, was been selected as a LexisNexis Top Blog for Insurance Law - 2011. The Insurance Coverage Corner focuses on legal updates, opinions and other relevant information for Insurance Coverage and Bad Faith Litigation, and its authors include members Michael Ethridge and Katherine Sullivan. You can subscribe to the Insurance Coverage Corner by clicking on "Add this Blog" under Subscribe at www.insurancecoveragecorner. com.

Fifteen Gallivan, White & Boyd Attorneys named to Best Lawyers in America

Gallivan, White & Boyd, P.A. is pleased to announce that 15 of its attorneys have been named to the 2012 edition of Best Lawyers in America, one of the most respected peer-reviewed publications in the legal profession. The attorneys are recognized for their leadership in 18 different categories. W. Howard Boyd, Jr., Shareholder, Greenville, S.C. – Bet-the-Company Litigation, Commercial Litigation, Product Liability Litigation – Defendants, James Brice, Shareholder, Greenville, S.C. – Product Liability Litigation – Defendants, Deborah Casey Brown, Shareholder, Greenville, S.C. – Employment Law Management,Gray T. Culbreath, Shareholder, Columbia, S.C. – Bet-the-Company Litigation, Commercial Litigation, Mass Tort Litigation, Mass Tort Litigation / Class Actions – Defendants and Product Liability Litigation – Defendants, H. Mills Gallivan, Senior Shareholder, Greenville, S.C. – Arbitration, Mediation, Workers' Compensation Law – Employers, Arthur L. Howson, Shareholder, Greenville, S.C. – Real Estate Law, Banking and Finance Law, Jennifer E. Johnsen, Shareholder, Greenville, S.C. – Employee Benefits (ERISA) Law,

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John T. Lay, Shareholder, Columbia, S.C. – Bet-the-Company Litigation, Commercial Litigation, Product Liability Litigation – Defendants, C. Stuart Mauney, Shareholder, Greenville, S.C. – Mediation, Personal Injury Litigation, Professional Malpractice Law, C. William McGee, Managing Partner, Greenville, S.C. – Personal Injury Litigation, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants,Phillip Reeves, Shareholder, Greenville, S.C. – Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants, T. David Rheney, Shareholder, Greenville, S.C. – Insurance Law, Personal Injury Litigation – Defendants, Luanne C. Runge, Shareholder, Greenville, S.C. – Legal Malpractice Law – Defendants,Daniel B. White, Shareholder, Greenville, S.C. – Commercial Litigation, Mass Tort Litigation, Mass Tort Litigation / Class Actions – Defendants, Personal Injury Litigation – Defendants, Product Liability Litigation – Defendants, Railroad Law, Ronald K. Wray II, Shareholder, Greenville, S.C. – Commercial Litigation, Railroad Law

Gallivan, White & Boyd Recognized as a "Best Law Firm" in 17 Categories

GREENVILLE, S.C. – Gallivan, White & Boyd, P.A., is pleased to announce that it has been recognized as a "Best Law Firm" for 2011-2012 by U.S. News and Best Lawyers. The firm is recognized for its leadership in 17 different practice group categories. Tier 1: Greenville, S.C. including: Banking and Finance Law,

Commercial Litigation, Employee Benefits (ERISA) Law, Employment Law – Management, Insurance Law, Mediation, Personal Injury Litigation – Defendants,

Product Liability Litigation – Defendants, Railroad Law, Real Estate Law, Transportation Law, Workers' Compensation Law – Employers

Tier 2: Greenville, S.C. including: Construction Law, Copyright Law, Healthcare Law, Litigation – Intellectual Property and Trademark Law

Gallivan, White & Boyd Launches Columbia Office with Top Litigators

Gallivan White & Boyd PA announces the establishment of a Columbia law office and the addition of a skilled team of litigators. John T. Lay, Jr., Gray Culbreath, Johnston Cox, John Hudson and Shelley Montague join GWB as partners in the Columbia office. James Brogdon, Childs Thrasher and Breon Walker serve as associates. Laura Jordan joins the office as Of Counsel. The Columbia office opened June 13, 2011 in the Capitol Center. "Our firm is known for having a deep bench of experienced litigators who can try complex cases," said Mills Gallivan, GWB senior shareholder. "This group is cut from the same cloth. They have tried numerous cases, they are leaders, and that's what we're looking for - leaders." The Columbia office follows the opening of an office in Charlotte earlier this year. Chris Kelly, who heads GWB's e-discovery and trucking litigation teams, is partner-in-charge for Charlotte.

Gallivan, White & Boyd Attorneys Elected to SCDTAA Leadership

GREENVILLE, S.C. – Gallivan, White & Boyd, P.A. is pleased to announce that attorneys Ronald K. Wray II and Breon C. M. Walker were elected to leadership positions within the South Carolina Defense Trial Attorneys' Association (SCDTAA) at the organization's 2011 annual meeting. After several years of service on the Executive Committee for the SCDTAA, Shareholder Ron Wray has been elected to serve as the organization's Secretary. As the leader of GWB's Litigation practice group, Wray's practice focuses on commercial transportation, products liability, and other complex litigation. He is currently recognized as a South Carolina Super Lawyer and by Best Lawyers in America.

Breon Walker, an associate with the firm, has been elected to serve a three-year term on the SCDTAA's Executive Committee. As a member GWB's Insurance and Business and Commercial practice groups, her practice focuses on personal injury litigation, products liability disputes, and commercial litigation. Walker earned her undergraduate degree from the University of South Carolina Honors College and her law degree from the Emory University School of Law. Prior to joining GWB, Walker practiced in both the criminal and civil divisions of the South Carolina Attorney General's Office.

Haynsworth Sinkler Boyd lawyers receive distinctions

Best Lawyers, the oldest peer-review publication in the legal profession, has named 8 of Haynsworth Sinkler Boyd, P.A.'s lawyers as "Lawyers of the Year" in its 18th edition of The Best Lawyers in America® (2012). John H. Tiller has been named the Best Lawyers' 2012 Charleston-SC Product Liability Litigation Lawyer of the Year. Todd W. Smyth has been named the Best Lawyers' 2012 Charleston-SC Medical Malpractice Law - Defendants Lawyer of the Year. William C. Boyd has been named the Best Lawyers' 2012 Columbia-SC Mergers & Acquisitions Law Lawyer of the Year. Thomas R. Gottshall has been named the Best Lawyers' 2012 Columbia-SC Product Liability Litigation Lawyer of the Year. H. Sam Mabry III has been named the Best Lawyers' 2012 Greenville Product Liability Litigation - Defendants Lawyer of the Year. G. Dewey Oxner, Jr. has been named the Best Lawyers' 2012 Greenville Health Care Law Lawyer of the Year. J. Derrick Quattlebaum has been named the Best Lawyers' 2012 Greenville Litigation - ERISA Lawyer of the Year. Matthew P. Utecht has been named the Best Lawyers' 2012 Greenville Medical Malpractice Law Lawyer of the Year.

Haynsworth Sinkler Boyd, P.A. is shortlisted for Benchmark Litigation's Awards

The Benchmark Litigation's inaugural awards for the Southeast region is to be held on Thursday, March 8, in Atlanta, GA. Contenders from Alabama, Arkansas, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, Oklahoma, South Carolina, Tennessee, Texas, Virginia, and West Virginia will attend the evening ceremony when recipients will be announced. Haynsworth Sinkler Boyd, P.A., a SC-based law firm, is a finalist in three categories: "SC Firm of the Year", "SC Litigator of the Year" - John H. Tiller, Shareholder, Charleston office, "SC Case of the Year" - Relates to Federal action against national bank, plaintiffs alleged bank violated Fair Credit Reporting Act.

Marcy J. Lamar Selected for Best Lawyers in America

McKay, Cauthen, Settana, & Stubley, P.A. is pleased to announce that Marcy J. Lamar, a member of the McKay Firm Workers' Compensation Team, has been selected selected by her peers for inclusion in Best Lawyers in America® 2012, in the field of workers' compensation defense litigation Mrs. Lamar was also selected for the honor in 2010 and 2011.

Joseph Sandefur Elected to President of the Horry County Bar for 2012

The law firm of McAngus Goudelock & Courie is pleased to announce that attorney Joseph Sandefur has been elected to serve as president of the Horry County Bar Association for 2012. Mr. Sandefur's practice focuses on civil and construction litigation. He received a B.A. in English from Rollins College in Florida and received his Juris Doctor from the Florida Coastal School of Law. He is a member of the South Carolina Defense Trial Attorneys Association and the South Carolina Bar Assocation, where he serves on the House of Delegates for the 15th Circuit and also on the Judicial Qualifications Committee.

Nelson Mullins' Marketing Department Honored for Communications Work

The Marketing Department of Nelson Mullins Riley & Scarborough LLP received the 2011 Award of Excellence in Media Relations from The International Association of Business Communicators Southern Region Oct. 13 during the organization's annual conference in New Orleans. The award recognizes the Marketing Department for its "Nelson Mullins and Lahive Join Forces" campaign. The seven-month project involved developing and implementing a comprehensive communications/media relations plan to promote the addition of more than 40 attorneys, staff, and technical specialists from a Boston intellectual property firm. More than 150 communicators in business, industry, private communications agencies, government, and nonprofit entities competed in three categories: Communications Management, Communications Skills, and Communications Creative. Entries were judged by professional communicators in Florida. Founded in 1970, The International Association of Business Communicators provides a professional network of about 15,000 business communication professionals in more than 80 countries. The Southern Region encompasses 22 state and city chapters throughout the South and also includes several Caribbean island nations.

Nexsen Pruet Earns Most First Tier Rankings in State and Charleston

Nexsen Pruet is proud to announce its results in the annual U.S. News – Best Lawyers® "Best Law Firms" rankings. With 47, Nexsen Pruet has the most first-tier rankings in South Carolina. And with 13, Nexsen Pruet has the most first-tier rankings in Charleston. In total, the firm earned 56 first-tier rankings in five North and South Carolina cities: Charleston, Columbia, Greensboro and Greenville (SC).

Three new associates have joined Nelson Mullins Riley & Scarborough in its Columbia office.

Susan Hills Nelson practices in the areas of business litigation and franchise law and litigation, with an emphasis on automobile franchise litigation. Ms. Nelson previously clerked for Judge John D. Geathers of the South Carolina Court of Appeals. She earned her Juris Doctor, summa cum laude, from the Charleston School of Law in May 2009. She was the top graduate in her law school class. While in law school, Ms. Nelson successfully argued a case as a student practitioner in the Fourth Circuit Court of Appeals. She was an associate research editor on the Charleston Law Review and a member of Moot Court. Ms. Nelson earned her Bachelor of Science from the Edmund A. Walsh School of Foreign Service at Georgetown University in May 1999. Tara Cloer Sullivan practices in the areas of complex business litigation, focusing on lender liability and banking fraud, and franchise and distribution litigation. She earned her Juris Doctor, magna cum laude, in 2010 from the University of South Carolina School of Law, where she was a member of the Order of the Wig and Robe, Order of the Coif, and Phi Delta Phi; served on the editorial board of the South Carolina Law Review; and received a CALI Award in Civil Procedure I. She earned a Bachelor of Arts in Political Science and Criminal Justice and Criminology, summa cum laude, from the University of South Carolina Honors College in 2007.

Miles Coleman practices in the areas of appellate law and business litigation. Prior to joining Nelson Mullins, Mr. Coleman clerked at the U.S. Court of Federal Claims in Washington, D.C.He earned his Juris Doctor, cum laude, from the University of South Carolina School of Law in May 2009. While in law school, he was the symposium editor of the South Carolina Law Review, an editor of the Harvard Journal of Law and Public Policy, a member of the

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National Moot Court Competition Team and the Mock Trial Competition Team, and was president of the Christian Legal Society and the Federalist Society. He was the winner of the Kate Bockman Memorial Moot Court Competition and the J. Woodrow Lewis Moot Court Competition. Mr. Coleman earned his Bachelor of Arts from Bob Jones University in 2005.

Fifteen S.C. Nelson Mullins Attorneys Named 'Best of the Year'

Best Lawyers, a legal peer-review publication, has named 15 South Carolina Nelson Mullins Riley & Scarborough LLP partners as the 2012 Best Lawyers of the Year in their respective practices and cities:

C. Mitchell Brown has been named the Best Lawyers' 2012 Columbia-SC Appellate Practice Lawyer of the Year.

Daniel J. Westbrook has been named the Best Lawyers' 2012 Columbia-SC Health Care Law Lawyer of the Year.

David E. Dukes has been named the Best Lawyers' 2012 Columbia-SC Bet-the-Company Litigation Lawyer of the Year.

David G. Traylor, Jr. has been named the Best Lawyers' 2012 Columbia-SC Product Liability Litigation - Defendants Lawyer of the Year.

Dwight F. Drake has been named the Best Lawyers' 2012 Columbia-SC Government Relations Practice Lawyer of the Year.

G. Mark Phillips has been named the Best Lawyers' 2012 Charleston-SC Product Liability Litigation - Defendants Lawyer of the Year.

George S. Bailey has been named the Best Lawyers' 2012 Columbia-SC Litigation - Trusts & Estates Lawyer of the Year.

John T. Moore has been named the Best Lawyers' 2012 Columbia-SC Financial Services Regulation Law Lawyer of the Year.

Karen Aldridge Crawford has been named the Best Lawyers' 2012 Columbia-SC Litigation - Environmental Lawyer of the Year.

Neil E. Grayson has been named the Best Lawyers' 2012 Greenville Mergers & Acquisitions Law Lawyer of the Year.

Neil Jones has been named the Best Lawyers' 2012 Greenville Litigation - Intellectual Property Lawyer of the Year.

P. Mason Hogue, Jr. has been named the Best Lawyers' 2012 Columbia-SC Securities/Capital Markets Law Lawyer of the Year.

Nelson Mullin's Legal Elite Attorneys in Columbia

Greater Columbia Business Monthly has selected six Nelson Mullins Riley & Scarborough LLP partners to its 2011 list of Legal Elite: Sue Erwin Harper, Labor Law; Frank B.B. Knowlton, Bankruptcy; Betsy Johnson Burn, Bankruptcy; George B. Cauthen, Bankruptcy; Stacy K. Taylor, Environmental; Karen Aldridge Crawford, Environmental. Greater Columbia Business Monthly invited Midlands attorneys to nominate the attorneys they consider the best in their practice areas. There were 10 different practice categories, and the top 10 in each category were selected for inclusion in the October 2011 edition. The ballots were tallied by an independent accounting firm.

Attorney Jim Irvin Named as Vice Chair of DRI Product Liability Committee

Jim Irvin, a partner in Nelson Mullins Riley & Scarborough's Columbia office, will begin the second year of his term as vice chair to the Trial Techniques and Technology Substantive Law Group of the Defense Research Institute's (DRI) Product Liability Committee. Mr. Irvin was elected to this position in 2010 and has completed one year of his two-year term. The Products Liability Committee is one of the largest and most active committees within DRI. The committee is comprised of 18 Specialized Litigation Groups (SLG). As the name suggests, each SLG is focused on either a specific type of product, group of products or particular issues within products liability law. Each SLG is guided by a steering committee comprised of knowledgeable and talented practitioners. With more than 3,200 members, the Products Liability Committee is as diverse as the practice areas it encompasses.

Attorney Jim Irvin Named to Advisory Board for City of Columbia

Jim Irvin, a partner in Nelson Mullins Riley & Scarborough's Columbia office, has recently been elected to the Advisory Board for City Year Columbia. As a member of City Year Columbia's Advisory Board, Mr. Irvin will contribute to the development of strategic plans that will scale the number of young people in service in high-need urban schools with City Year, and increase their impact on student and school success. The City Year Columbia Advisory Board is a volunteer board that provides strategic direction for the organization on multiple fronts. City Year is a national service organization founded in 1988 that unites young people of all backgrounds for a year of full-time service in high-need schools nationwide. In communities across the United States and through two international affiliates, these diverse young leaders help turn around high-need schools and keep students in school and on track to graduation by working to improve their attendance, behavior and course performance.

Attorney John F. Kuppens Elected as DRI National Director

John F. Kuppens, a partner in Nelson Mullins Riley & Scarborough's Columbia office, has been elected to a three-year term as a National Director for DRI – The Voice of the Defense Bar. DRI is an international organization of attorneys defending the interests of business and individuals in civil litigation, and it has more than 22,000 members. DRI's National Elections

were held at its annual meeting in Washington, D.C. An active member of DRI, Mr. Kuppens has held numerous positions within the organization, and he is the immediate past chair of DRI's Product Liability Committee. Mr. Kuppens also serves on the Board of Directors of the South Carolina Defense Trial Attorneys Association.

Nelson Mullins Riley & Scarborough Elects New Managing Partner

The partnership of Nelson Mullins Riley & Scarborough LLP has elected Columbia partner James K. Lehman as its new managing partner. He will oversee the Firm's 12 East Coast offices and more than 430 attorneys and government relations professionals, as well as more than 500 support staff. Mr. Lehman will maintain his practices in the areas of business litigation and investigations and environmental litigation. He replaces David E. Dukes, who is stepping down after serving as managing partner of the Firm since 2001. Mr. Dukes will continue to serve on the Firm's Executive Committee and will continue his national litigation practice. "David has led the Firm through phenomenal growth over the past decade despite significant challenges," Mr. Lehman said. "I look forward to continuing his work expanding our services to our clients, broadening our geographic reach, and attracting talented professionals to the Firm." "Jim has proven his skills as a leader by leading various Firm committees and through his role as Operations Partner of the Firm," Mr. Dukes said. "He is an exceptional leader in our Firm and in our community in addition to being a highly sought-after business litigator and counselor."

In the fall of 2004, Mr. Lehman returned to Nelson Mullins after serving as Senior Vice President, General Counsel, and Corporate Secretary to Safety-Kleen Corp., where he helped the corporation emerge from Chapter 11 protection in what, at the time, was one of the larger and more complicated bankruptcies in U.S. corporate history. Before first joining Nelson Mullins in 1995, he worked at law firms in Washington, DC, and New York. After law school he served as law clerk to Judge Robert F. Chapman of the 4th U.S. Circuit Court of Appeals.

Four New Partners in Columbia Office of Nelson Mullins Riley & Scarborough

Four Nelson Mullins Riley & Scarborough attorneys have been promoted to partner in the Columbia office. The new partners are: Matt Bogan, whose practice focuses in the areas of appellate law, business litigation, and consumer financial services litigation. Julie Flaming, whose practice focuses in the areas of pharmaceutical and medical device litigation, product liability, business litigation, and electronic discovery and litigation readiness. Chris Genovese, whose practice focuses on complex commercial litigation, including business torts, franchise and distribution litigation, and class actions. Jeremy Hodges, whose practice is focused on consumer financial services and business litigation.

Attorney Eli Poliakoff Recieves Award

Nelson Mullins Charleston associate Eli Poliakoff has received the Firm's Edward W. Mullins, Jr., Excellence in Marketing Award, in recognition of his service to Firm clients in new, cutting-edge legal issues in healthcare law and Medicare compliance issues. Mr. Poliakoff advises Firm clients regarding new Medicare Secondary Payer ("MSP") compliance requirements, including Medicare reporting rules, MSP billing guidelines, and Medicare issues for litigants or prospective litigants. He assists a wide spectrum of the Firm's clients on MSP requirements, including healthcare providers, medical device manufacturers, entities subject to product recalls, and product liability and asbestos defendants. He is a frequent author and speaker on MSP-related issues and compliance strategies. In addition, Mr. Poliakoff has identified emerging legal requirements in the healthcare industry resulting from federal healthcare reform and the 2009 Stimulus Act. He is a resource for clients throughout the firm on recent changes to the Health Insurance Portability and Accountability Act (HIPAA) and on new requirements regarding technology and health information privacy. He regularly advises Firm attorneys and clients on strategies to comply with new HIPAA requirements and designs HIPAA/health information privacy training programs and policies for Firm clients. Mr. Poliakoff also advises clients on new legal considerations related to the selection and implementation of electronic health records systems, including recently implemented health information exchanges between healthcare providers.

Attorney Kaymani D. "Kay" West to Serve as Federal Magistrate Judge

Kaymani D. "Kay" West will leave her 10-year position as partner in Nelson Mullins Riley & Scarborough's Columbia office to join the bench Jan. 1 as Federal Magistrate Judge for the U.S. District Court for the District of South Carolina, Florence Division. Ms. West, who practices in several areas of litigation, is replacing The Honorable Shiva V. Hodges, who is returning to the Columbia Division. Ms. West was selected by the U.S. District Court Judges after screening by a panel of local legal and community leaders. Her term runs eight years. "I am honored to have the opportunity to serve on the bench," Ms. West said. "Nelson Mullins has afforded me many opportunities to grow and learn through representing clients in their court matters, and I look forward to applying my skills to my future work." Ms. West joined Nelson Mullins in 2001 as a second career after 16 years with an electric utility company. She earned her Juris Doctor from the University of South Carolina in 2000. During law school she served as research editor for the ABA Real Property, Probate and Trust Journal and was vice president of the Black Law Students Association. She received the 2000 Compleat Lawyer Award and

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also earned a CALI Award for Substantive Criminal Law. Ms. West earned a Bachelor of Arts in Public Affairs, summa cum laude, from Columbia College. In 2006 Ms. West completed an externship at the South Carolina Attorney General's Office where she served as Pro Bono Special Prosecutor. This service allowed her the opportunity to prosecute criminal domestic violence cases while providing a valuable service to the State of South Carolina. She served as judicial law clerk to the Honorable Joseph F. Anderson, Jr., U.S. District Court for the District of S.C., before joining Nelson Mullins.

Nelson Mullins Providing Wills for Heroes

Nelson Mullins associate Michael Anzelmo assists Howard Cook, chief of police at Columbia College, and his wife with their wills. Nelson Mullins partner Brian Crotty assists Columbia Police Chief Randy Scott with his estate planning.

The events of September 11, 2001, serve as a stark reminder of the extraordinary sacrifices made by firefighters, police, and emergency medical technicians every day. First response personnel devote their lives to serving their communities and are prepared to pay the ultimate price in the line of duty. In an effort to show appreciation for their efforts and sacrifices, Nelson Mullins Riley & Scarborough LLP offers the Nelson Mullins Wills for Heroes Program. The program offers first response personnel free will preparation services. Since the Nelson Mullins Wills for Heroes Program inception in November 2001, volunteer attorneys and staff have provided thousands of free wills to first responders throughout South Carolina, North Carolina, and Georgia. To commemorate the 10th anniversary of Sept. 11, 2001, more than 40 attorneys and staff members wrote more than 300 wills for first responders in Columbia.

Three Nexsen Pruet Attorneys Named as "Lawyer of the Year" for 2012

Legal publication The Best Lawyers in America ® has named eight Nexsen Pruet attorneys to its list of the "2012 Lawyers of the Year." The attorneys practice in the firm's Columbia, Charleston and Greensboro offices.

Cherie W. Blackburn is selected as Litigation - Labor & Employment Lawyer of the Year for Charleston, SC. Henry W. Brown is selected as Construction Law Lawyer of the Year for Columbia, SC. Susi McWilliams is selected as Litigation - Labor & Employment Lawyer of the Year for Columbia, SC.

The Palmetto Center for Women Honors Nexsen Pruet and Attorney Nikole Mergo

The Palmetto Center for Women recently recognized Nexsen Pruet and attorney Nikole Mergo at its annual "Honoring Women in Achievement" awards luncheon in Columbia (November 16th). Mergo received the 2011 Corporate TWIN Award while the law firm received the Palmetto Center for Women Award. In recognizing Nexsen Pruet, the PCW wrote that the firm "works to leverage the skills and strengthen the potential of women both at the firm and in the community at large. This commitment has focused on multiple issues that include ensuring better wages, enhancing professional opportunities… and increasing the number of women in elected and appointed leadership positions." Nikole Mergo, a commercial litigation attorney who concentrates her practice on employment litigation defense, unfair business practices and healthcare employment, is a member (partner) of Nexsen Pruet and represents clients in both South Carolina and North Carolina. She is a founding member of the firm's Women's Leadership Initiative.

Laney Elected Chief Operating Officer

Turner Padget Graham & Laney, P.A. is pleased to announce that Edward W. Laney, IV has been re-elected to serve the firm as its Chief Executive Officer for an additional three-year term effective January 1, 2012. Mr. Laney is also the Managing Shareholder of the Columbia office. He was recognized in the 2011 edition of Benchmark: A Definitive Guide to America's Leading Litigation Firms and Attorneys as a "Local Litigation Star" and recently included in the 2012 Best Lawyers in America which is based entirely on peer review. Eddie obtained his undergraduate degree and his Juris Doctor from the University of South Carolina.

Richard Hinson Named to Executive Committee

Turner, Padget, Graham & Laney, P.A. is pleased to announce that Richard Hinson has been elected to a three-year term on the firm's Executive Committee and will also serve as the Managing Shareholder of the Florence office. Richard focuses his state and federal practice on general civil litigation, mediation and arbitration, personal injury, contracts, and insurance coverage. He is a past president of the Florence County Bar Association and currently serves on the South Carolina Supreme Court Commission on Alternative Dispute Resolution. Richard obtained his Juris Doctor degree from the University of South Carolina School of Law in 1990 after graduating with honors from The Citadel in 1987.

St. Clair Named to Executive Committee

Turner Padget Graham & Laney, P.A. is pleased to announce that Timothy D. St. Clair has been elected to a three-year term on the firm's Executive Committee. In addition, Mr. St. Clair is the Managing Shareholder of the Greenville office. Tim concentrates his practice on intellectual property law, patents, trademarks, trade secrets and copyrights. Mr. St. Clair earned his J. D. from the University of Virginia and a Bachelor of Science from Virginia Tech. Tim is an active volunteer with the Juvenile Diabetes Research Foundation for which he is the national chair of the Ride Leadership Committee, a national head coach of the Ride to Cure Diabetes program, and a member of the national Program,

Development & Training Committee. He also serves on the board of directors of the Greenville Spinners Bicycle Club and chairs the Greenville Spinners Bicycle Safety Foundation.

Michael G. Roberts Named to Executive Committee

Turner Padget Graham & Laney, P.A. is pleased to announce that Michael G. Roberts has been elected to a three-year term on the firm's Executive Committee. In addition, Mr. Roberts is the Managing Shareholder of the Charleston office. Mike focuses his practice in the areas of federal and state taxation, estate planning, business transactions (including mergers and acquisitions), commercial real estate and health care law. He holds a Master of Laws degree in Taxation and is a certified specialist in both Taxation and Estate Planning and Probate.

Roe Cassidy Again Ranked Among Top Law Firms in U.S. News Publication

Roe, Cassidy, Coates & Price, P.A., is pleased to announce its inclusion in U.S. News-Best Lawyers® "Best Law Firms" 2011-2012 publication that recognizes the top practices in the nation. The firm received a Tier 1 ranking in the following practice areas: Bankruptcy & Creditor Debtor Rights/Insolvency & Reorganization Law and Employment Law – Individuals . In addition the firm received a Tier 2 ranking in the following practice areas: Commercial Litigation; Employment Law – Management; Litigation – Eminent Domain & Condemnation; and Litigation – Labor & Employment.

Two Roe Cassidy Attorneys Selected for Inclusion in Best Lawyers 2012

Roe Cassidy Coates and Price, P.A. is pleased to announce that two of its attorneys have been selected by their peers for inclusion in The Best Lawyers in America® 2012. Following are the Roe Cassidy attorneys selected for inclusion, as well as the practice areas in which their work is recognized. Randy Moody - Labor & Employment; Employment Law - Individuals; Employment Law - Management. Clark Price - Medical Malpractice Defense.

Richardson Plowden expands Myrtle Beach office

Richardson, Plowden & Robinson, P.A. announces the expansion of its Myrtle Beach office located at 2103 Farlow Street. The firm now occupies the entire office building and welcomes clients at the front entrance facing Farlow Street. The transition to the larger space offers many benefits to Richardson Plowden clients and other attorneys. The office is equipped with four private conference rooms, convenient on-site parking, Wi-Fi access, and is centrally located in the Grand Strand. With its experienced mediators, Richardson Plowden's new office serves as an accommodating, neutral ground for large and small mediations. "This expansion gives our firm the room and environment to continue to grow and better serve our clients," says Myrtle Beach attorney Doug Baxter. "We're excited about the new front entrance, which gives us more visibility and accessibility from the main road."

Attorney Elaine H. Fowler elected as Vice-chair of Planning Commission

Turner Padget Graham & Laney, P.A. is pleased to announce that Elaine H. Fowler has been elected vice chair of the Sullivan's Island Planning Commission. Ms. Fowler has served on the Commission since 2005. The Planning Commission is comprised of seven (7) Sullivan's Island residents, appointed by Council, on a two-year, rotating basis. This advisory committee to Council reviews zoning related ordinances, subdivision and re-zoning requests, holds public hearings, engages in long-range Town planning and other requirements as outlined by the State of South Carolina Legislature and delegated by Town Council.

Ms. Fowler is a shareholder in the Charleston office and is a member of the firm's Business Transactions Group. She also serves on the Board of Directors of the Community Associations Institute and the Board of Directors of the Charleston Regional Development Alliance.

Smith Moore Leatherwood Announces Top Rankings in U.S. News and Best Lawyers® "Best Law Firms" Survey

U.S. News and Best Lawyers® ranked Smith Moore Leatherwood LLP among the nation's best for legal services once again in its second annual "Best Law Firms" survey. The firm was nationally recognized for Land Use & Zoning Law (Tier 2) in the 2011-2012 rankings, and five of the firm's seven offices in the Carolinas and Georgia were recognized in the survey's metropolitan rankings. "This recognition, especially the receipt of a national ranking, is an honor for our firm," said Rob Marcus, chairman of the firm's Management Committee. "These rankings reflect our commitment to the pursuit of excellence as individual attorneys, and as a firm." The firm earned Tier 1 rankings across 36 practice areas in its Atlanta, Ga.; Greensboro, N.C.; Raleigh, N.C.; and Greenville, S.C. offices. Tier 2 rankings were awarded for 19 practice areas in the Charlotte, N.C., Atlanta, Greensboro, Raleigh and Greenville offices. The Greensboro office also received a Tier 3 ranking in one additional practice area. The national and metropolitan first-tier rankings are featured in the "Best Law Firms" standalone publication; the rankings in their entirety are posted in a special section on the U.S. News & World Report's website. The three-tiered rankings are based on client and lawyer evaluations, peer reviews from leading attorneys in their field and the review of additional information provided by law firms as part of a formal submission process. The "Best Law Firms" rankings incorporate the 3.9 million evaluations of 41,284 individual lawyers collected by Best Lawyers® in its most

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recent annual survey. To be eligible for a ranking, a law firm must have at least one lawyer who is included in "Best Lawyers" as part of the annual peer review assessment; 63 Smith Moore Leatherwood attorneys were named "Best Lawyers" in the 2012 ranking.

Attorney Shannon Furr Bobertz selected for ABOTA Membership

The firm of Turner Padget Graham & Laney, P.A. proudly announces that Shannon Furr Bobertz has been approved for membership by the National Board of Directors of the American Board of Trial Advocates ("ABOTA") Shannon is a shareholder in the Columbia office and concentrates her practice in torts and insurance, municipal law and insurance coverage law. Judges, legislators and community leaders believe that ABOTA encompasses what is best in the legal profession. ABOTA strives to educate students and their parents, educators, judges, lawyers and all civic leaders with respect to principles of civility, professionalism and the right to trial by jury.

Attorney Michelle Proveaux Clayton elected as Shareholder

Turner Padget Graham & Laney, P.A. has elected Michelle Proveaux Clayton as a shareholder in the firm's Columbia office. She concentrates her practice on employment law defense, commercial litigation, and bankruptcy. Michelle earned her J.D. from the University of South Carolina School of Law in 2004 and graduated from Clemson University with a B.S. in 2001. She is a 2011 graduate of the South Carolina Bar Leadership Academy and a 2009 graduate of Leadership South Carolina in addition to serving on the Board of Directors of the Columbia Clemson Club and the Junior League of Columbia, Inc.

Attorney Elaine H. Fowler Selected to Board of Directors for CAI

Turner Padget Graham & Laney, P.A. is pleased to announce that Elaine H. Fowler has been elected to serve on the Board of Directors for Community Associations Institute (CAI), South Carolina Chapter. Community Associations Institute (CAI) is a national organization dedicated to fostering vibrant, competent, harmonious community associations. For nearly 40 years, CAI has been the leader in providing education and resources to community association volunteer leaders, professional managers, community management firms and other professionals and companies that provide products and services to associations. Ms. Fowler is a shareholder in Turner Padget's Charleston office.

Attorney Ashley Kirkham Certified by the Commission on Health Care

Turner Padget Graham & Laney, P.A. is pleased to announce that Ashley Kirkham has recently been certified by the International Commission on Health Care Certification as a (MSCC) Medicare Set-aside Consultant Certified. Ms. Kirkham is a resident in the Columbia office and concentrates her practice in defense of workers' compensation claims and Medicare compliance. The Medicare Set-aside Consultant Certified (MSCC) credential is designed to identify those professionals who work within the workers' compensation benefit system as either a health care professional, legal representative, or as an insurance claims adjuster, who have achieved specific pre-approved training in Medicare set-aside trust arrangements, and have demonstrated a breadth of knowledge regarding the development and application of the Medicare set-aside trust arrangement process.

Attorney Andrew W. Kunz joins Turner Padget Graham & Laney, PA

Andrew W. Kunz has joined the law firm of Turner Padget Graham & Laney, P.A. as an associate attorney. He is a resident in the Columbia office practicing in the area of Product Liability. A 2006 summa cum laude graduate of College of Charleston, Mr. Kunz ranked first in his graduating class. He received his Juris Doctor, cum laude, from the Charleston School of Law in 2009. During law school, he was Editor-in-Chief of the Federal Courts Law Review. From 2009 until present, Mr. Kunz has served as a staff attorney for the South Carolina Supreme Court.

Attorney Julie J. Moose Honored by TWIN

Turner Padget Graham & Laney, P.A. is proud to announce that Julie J. Moose was honored at the 2011 Tribute to Women of Influence ("TWIN") ceremony on October 27, 2011. Julie was one of ten professional women nominated for recognition in the Pee Dee region. Ms. Moose is an attorney in our Florence office and represents businesses, shareholders, directors, and officers in a wide range of matters in both litigation and non-litigation contexts. TWIN honors women who have made significant contributions in managerial, executive, supervisory and professional roles. It also recognizes business entities with policies and practices which encourage high achievement by women.

Pierce Campbell Named Shareholder

Turner Padget Graham & Laney, P.A. has elected C. Pierce Campbell as a shareholder in the firm's Florence office. Mr. Campbell's practice is divided between business and commercial litigation, probate and trust litigation, and real property litigation. A lifelong Florence resident, Mr. Campbell is very involved in his community. He currently serves as President of the Florence Kiwanis Club and as the Senior Warden at St. John's Episcopal Church. Mr. Campbell is also active in the American Bar Association Section of Litigation, where he currently serves as Chair of the First Chair Press, a book publishing organization, and as Vice-Chair of the Business Torts Litigation Committee.

Mr. Campbell earned his Juris Doctor from the University of South Carolina School of Law in 2004 and graduated from the University of Georgia with a B.A. in Finance in 2001.

Attorney Nosi Ralephata elected as Shareholder

Turner Padget Graham & Laney, P.A. proudly announces that Nosi Ralephata has been elected to shareholder. Ms. Ralephata is based in the firm's Charleston office. She is an experienced trial lawyer who handles litigation in a wide range of areas including business, commercial and employment litigation and insurance coverage actions. Nosi is a native of Zimbabwe and has lived, studied and worked abroad in England and Botswana. Ms. Ralephata earned her J.D. from the University of South Carolina School of Law in 2004 and graduated from the University of East London, United Kingdom in 1996 with an LLB Hons. Nosi was the recipient of the Forty Under 40 Award in 2010 and the Emerging Legal Leaders Award in 2011. She is very active in the TIPS Section of the American Bar Association and the ABA's Section of Litigation.

Turner Padget Named as Highly Recommended Litigation Firm

Turner Padget Graham & Laney, P.A. is pleased to announce that the firm has been recognized in the 2012 edition of Benchmark Litigation: A Definitive Guide to America's Leading Litigation Firms and Attorneys as a "highly recommended firm" for litigation in South Carolina. This marks the third consecutive year in which Turner Padget has earned Benchmark's recommendation. In addition, the publication recognizes nine of Turner Padget's shareholders as "local litigation stars:" R. Wayne Byrd (Myrtle Beach), J. Kenneth Carter, Jr. (Columbia), Edward W. Laney IV (Columbia), Steven W. Ouzts (Columbia), Thomas C. Salane (Columbia), W. Duvall Spruill (Columbia), Timothy D. St. Clair (Greenville)

Thames Promoted to Lieutenant Colonel

Turner Padget Graham & Laney, P.A. is proud to announce that G. Troy Thames has been promoted to Lieutenant Colonel with the U. S. Army Reserve. Troy serves as a Judge Advocate with the Army Special Forces. He is based in the Charleston office and concentrates his practice in the area of general civil litigation, with an emphasis on construction litigation and insurance law.

Fowler Receives Influential Women in Business Award

Turner Padget Graham & Laney, P.A. is proud to announce that Elaine H. Fowler was selected as a finalist for the 2011 Influential Women in Business awards by the Charleston Regional Business Journal. The winners in each of the four categories were named at a luncheon on October 27 at the Marriott Lockwood in Charleston. The finalists represent local women who have demonstrated professional excellence and leadership in their careers and community. Ms. Fowler is an attorney in the Charleston office and is a former president of the South Carolina Bar.

Turner Padget Lands Top Rankings Among Best Law Firms

Turner Padget Graham & Laney, P.A. is pleased to announce the firm's inclusion on U.S. News & World Report's Best Law Firms list for 2011-2012. Turner Padget is recognized with the highest "tier one" ranking in 22 practice areas throughout South Carolina. Inclusion on the list, which is published in conjunction with Best Lawyers, signals a combination of excellence and experience. The complete list is available today at www.usnews.com/bestlawfirms.

Womble Carlyle, Buist Moore Smythe McGee Merge

Womble Carlyle Sandridge & Rice, LLP and the Charleston law firm Buist Moore Smythe McGee, P.A. merged effective April 30th, 2011, creating the largest law firm in both North and South Carolina. The addition of the Charleston office has expanded Womble Carlyle to a 550-attorney firm. The merger with Buist Moore Smythe McGee gives Womble Carlyle attorneys and clients a list of varied benefits, including access to the specialty experience in Buist Moore Smythe McGee's Admiralty and Maritime practice area, a strong position to serve the currently underway expansion of the Panama Canal, and additional critical mass in South Carolina. Specifically, with the addition of a Charleston office, Womble Carlyle's Greenville, S.C., office is poised to expand its in-state geographic network and footprint in which it can directly assist clients.

Jim Myrick-Led Business Litigation Committee Earns ABA Annual Award

The American Bar Association has honored a professional committee chaired by Womble Carlyle attorney Jim Myrick. The Business Litigation Committee of the ABA's Tort Trial and Insurance Practice Section won the 2011 Leadership Involvement Award. This award is presented to a Committee that has demonstrated outstanding leadership within the Tort Trial and Insurance Practice Section. Award winners are recognized for providing advice, guidance and professional development opportunities. Another factor is the involvement of the Committee's members in leadership roles in other Section Standing Committees, Task Forces and/or Council. Myrick chaired the Business Litigation Committee in 2010-11. The Business Litigation Committee is one of 32 committees within the section and includes nearly 1,400 total members.

Keith Munson, Sandi Wilson Speak to New York ACC Members

Womble Carlyle attorneys Keith Munson and Sandi Wilson gave a presentation on "Wincing is Not a Form of Preparation – What 'The Office' Can Teach Us About Corporate Representative Depositions" to

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the Greater New York Chapter of the Association of Corporate Counsel. The May 25th presentation, focused on pitfalls to avoid in the deposition process, using humorous examples gleaned from the television show "The Office." In-house attorneys from across the New York City metropolitan area attended the presentation. Wilson and Munson both practice in Womble Carlyle's Greenville office.

Womble Carlyle Attorneys Ranked Among The Best Lawyers in America

Womble Carlyle placed 29 South Carolina attorneys on the 2012 Woodward/White Inc.'s The Best Lawyers in America rankings, a new record for the firm. Charles J. Baker III, Bet-the-Company Litigation, Commercial Litigation, Construction Litigation, William C. Cleveland III, Commercial Litigation, Intellectual Property Litigation, Real Estate Litigation, Securities Litigation, Mediation, David M. Collins, Admiralty & Maritime Law, C. Allen Gibson Jr., Construction Law, Construction Litigation, Henry E. Grimball, Commercial Litigation, Insurance Law, Personal Injury Litigation (Defendants)

*Julius H. Hines, Admiralty & Maritime Law, Sean D. Houseal, Environmental Litigation, David B. McCormack, Arbitration, Employment Law (Management), Labor & Employment Litigation, James D. Myrick, Insurance Law, Personal Injury Litigation (Defendants), Gordon D. Schreck (20), Admiralty & Maritime Law

Henry B. Smythe, Jr., Personal Injury Litigation (Defendants), David S. Yandle, Employment Law (Management), Labor Law (Management), Labor & Employment Litigation, Samuel W. Outten, Commercial Litigation, Legal Malpractice Law (Defendants), Product Liability Litigation (Defendants).

Mark Buyck, Jr. and Mark Buyck, III selected as Best Lawyers

Willcox, Buyck & Williams Law Firm announces that two of its lawyers have been selected for the 2012 edition of The Best Lawyers in America. Selection to be listed in The Best Lawyers in America edition is based on exhausted and rigorous peer-review surveys comprising confidential evaluations of the top attorneys in the country. Mark W. Buyck, Jr. is listed in the practice area of personal injury litigation - defendants. He has been listed in every edition of The Best Lawyers in America since it was inaugurated over a quarter-century ago. Mark W. Buyck, III is listed in the category of labor and employment law - management, his expertise in that expanding area of the law.

Steven Naifeh, Editor-in-Chief of The Best Lawyers in America, congratulated Mark W. Buyck, Jr., "indeed special congratulations are in order as you are one of the distinguished group of attorneys who have now been listed The Best Lawyers in America for 25 years or longer".

Lindsay L. Builder joins Wilkes Law Firm as an Associate

Wilkes Law Firm, P.A., is pleased to announce that Lindsay L. Builder has joined the firm in its Spartanburg office. Lindsay graduated from Furman University in 2007 with a B.A. in Political Science, and earned his Juris Doctor, cum laude, from the University of Richmond's T.C. Williams School of Law in 2010. While pursuing his Juris Doctor, Lindsay was active in the Trial Advocacy and Moot Court, winning the Moran Brown Trial Advocacy competition and later serving as captain and competitions chair for the interscholastic trial advocacy team. Following law school, Lindsay clerked for the Honorable G. Edward Welmaker, resident judge of the Thirteenth Judicial Circuit of South Carolina. Lindsay's practice at Wilkes Law Firm, P.A., will include all areas of civil litigation, including professional liability defense, construction litigation, commercial litigation, and personal injury defense.

Graham P. Powell has been invited to join the Council on Litigation Management

Wall Templeton & Haldrup, P.A. is pleased to announce that Mr. Graham P. Powell has been invited to join the prestigious Council on Litigation Management. The Council is a nonpartisan alliance comprised of thousands of insurance companies, corporations, Corporate Counsel, Litigation and Risk Managers, claims professionals and attorneys. Through education and collaboration the organization's goals are to create a common interest in the representation by firms of companies, and to promote and further the highest standards of litigation management in pursuit of client defense. Selected attorneys and law firms are extended membership by invitation only based on nominations from CLM Fellows.

Wallace Lightsey Named the Greenville Best Lawyers Bet-the-Company Litigation Lawyer of the Year for 2012

Wyche, P.A. is pleased to announce that attorney Wallace K. Lightsey has been named the Best Lawyers' Bet-the-Company Litigation Lawyer of the Year for 2012 in Greenville, S.C. Best Lawyers compiles its lists of outstanding attorneys by conducting exhaustive peer-review surveys in which thousands of leading lawyers confidentially evaluate their professional peers. Only a single lawyer in each legal area in each community is being honored as the "Lawyer of the Year." The lawyers being honored as "Lawyers of the Year" have received particularly high ratings in our surveys by earning a high level of respect among their peers for their abilities, professionalism, and integrity. "Wyche takes great pride in the talent and creativity of all of its lawyers. In litigation our core competence lies in tackling complex litigation on behalf of our clients, so it is especially rewarding to be named Greenville's Lawyer of the Year for Bet-the-Company Litigation," says Lightsey.

The Honorable Frank R. Addy, Jr.
United States Circuit Judge

by David A. Anderson

The Honorable Frank R. Addy, Jr. was elected to Seat 1 of the Eighth Judicial Circuit on February 3, 2010. Judge Addy is a life-long Greenwood native, whose parents are the late F. Robert Addy, Sr., and Mary Katherine Addy, a retired English teacher. He is married to Kelly Sprouse Addy, a registered nurse, and they have two children, Robert, and Grayson.

Judge Addy grew up in Greenwood. Upon graduation from high school, Judge Addy enrolled at the University of South Carolina where he graduated cum laude in 1990 with a degree in International Studies. While attending USC law school, he served as Articles Editor for the Student Editorial Board of the Real Property, Probate and Trust Journal, was president of the International Law Society, served on the International Moot Court Team, and was a member of the Palmetto Law Society. Judge Addy graduated from law school and was admitted to the SC Bar in 1993.

Judge Addy began his legal career as Assistant Solicitor for the Eighth Circuit and was promoted to Deputy Solicitor in 1995. Upon the passing of his father in early 1997, Judge Addy entered the private practice of law while assisting his grandparents in the family business. From 1998 to 1999, he served as Chief Public Defender for Greenwood and Abbeville Counties. He was appointed Greenwood County Probate Judge on June 3, 1999 and was subsequently reelected without opposition. From 2006 to 2007 he served periodically as Special Circuit Judge during the convalescence of the late Judge Wyatt Saunders. In 2008, Judge Addy assisted in establishing the Eighth Circuit Drug Court.

Judge Addy has been active in many civic, community, and professional organizations, including coaching mock trial teams and Cub Scouts. He has served as President of the South Carolina Association of Probate Judges, chaired several committees of that organization, and chaired the Probate Judge's Advisory Committee to the Chief Justice from 2001 to 2003. Judge Addy received the Executive of the Year award from the Emerald Chapter of the IAAP in 2003. He and his family are active members of St. Mark United Methodist Church. He is a member of Greenwood Masonic Lodge #91 and the Greenwood Cotillion Club. Judge Addy enjoys boating and any type of water activities as well as Gamecock Football.

Q. What has been the hardest part of transitioning from Probate Judge to presiding as a Circuit Court Judge?

I now work with the living instead of the dead, and the living complain more. In all seriousness, I miss working with the public the way I did in probate court, and I found helping a family through a difficult period in their life to be very rewarding. My current job can be more insulated from the public, which I think is not necessarily beneficial for the system or a judge, so I do resist that.

Q. What has been the biggest challenge you face with the court system?

The sheer volume of cases judges are expected to handle in SC. In SC, each judge handles over 5000 cases per year - the most cases per judge of any state in the country. The next highest number is NC with 3400 cases per judge, and Massachusetts judges have it easy with just 370 cases per judge. I rely on the assistance of lawyers and my clerk to alert me to a particular case's nuances. However, the sheer volume we have to contend with, even if only administratively, can be quite challenging.

Q. What advice do you have for lawyers appearing in your courtroom?

During CPNJ weeks, when I have 20-30 cases set for one day, please do not email me your memorandum at 11:00 the night before the hearing. Odds are I am sleeping then, so I won't get a chance to review it. Please try to get it to me or my clerk a few days in advance. Also, as a judge once told me, they call

them "briefs" for a reason, so please try to keep them brief.

Q. What are the mistakes you most often see lawyers make in cases before you that could easily be corrected?

I understand the need to display emotion or passion in the presence of a jury, but when addressing a question of law or a non-jury matter, emotional displays should be tempered. Often, the best service a lawyer can provide to a client is objectivity, and getting emotional about a case can, at times, threaten your objective assessment of the case.

In a similar vein, I remain impressed with the way jurors are able to pay attention and give consideration to both sides of any case. In cases where one party attempts to vilify the opposing party, juries hold it against them, and it hurts their case. Unfortunately, juries have an expectation that lawyers are less than forthright, so candor and openness with a jury scores a lot of points.

Q. What factors led you to a career in the law?

Complete happenstance / carelessness: I spent my undergraduate years preparing for a career in international business and anticipated entering USC master's of international business program. My application packet for MIBS was marked incomplete because a professor, who I had asked to furnish a reference, forgot to mail it to them. By the time I realized his mistake, they had filled all the seats in the German track. A friend suggested I go to law school, and reapply to MIBS next year. I hurriedly took the LSAT, and after the first year, having tolerated the misery of being a 1L, I decided to go ahead and finish. I probably need to find that professor and thank him, because I truly enjoy practicing law.

Q. Who has been the biggest influence in your legal career?

I grew up next door to Justice Jim Moore, so our families have been friends for years. He possesses one of the best intellects and senses of humor I have ever known, and he has a disarmingly polite charm and unassuming way with everyone, regardless of who they are. The late Judge Jim Johnson's and Judge Henry Floyd's diligence, patience and intelligence always impressed me, too. In terms of demeanor, my predecessor, the late Wyatt Saunders, was the quintessential Southern gentleman and Renaissance man.

Q. Is there a particular pet peeve that you have as it relates to conduct in your courtroom or for practitioners before you?

Inaccurate estimation of time for the length of a trial – always double the time you think it will take to try a case. Also, I hate keeping a jury waiting, so please mark and stipulate to exhibits in advance; that allows me to emphasize both lawyer's professionalism in my opening remarks to the jury. Also, let me know if there are evidentiary issues I need to address before the trial starts so that I don't keep the jury waiting. Just as anyone hates waiting an hour to see the doctor, juries hate waiting hours while procedural issues are dealt with. I want to make jury service a positive experience as much as possible because a positive experience rightfully encourages a positive perception of fairness and efficiency in our court system.

What advice would you give young lawyers just starting out?

Your career is not as important as you believe. You need to have a life outside your profession, and if you don't have a life, get one. And, if you have a boss who believes you shouldn't have a life, get a new boss - fast.

Q. Counsel now takes an oath that requires fairness, integrity and civility not only to the court but also in all written and oral communications, has this been a problem that you have observed?

Only sparingly. I find that lawyers are usually extremely polite to and congenial with one another. Sometimes I see a clash of egos, but more often than not, lawyers keep it very civil. Lack of civility is not merely unprofessional, it's a major character flaw. In all candor, the true professional already exhibited fairness, integrity and civility before the oath requirement, and the requirement of an oath does little to improve the behavior of the boorish attorney.

Q. What advice would you give young lawyers just starting out?

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The Honorable Timothy Martin Cain
United States District Judge

by Jack Riordan

On September 29, 2011, the Honorable Timothy Martin Cain was sworn in as a United States District Judge for the District of South Carolina. Judge Cain, a life-long Oconee County resident, is married to the former Renee Patterson and they are the proud parents of a sixteen year-old son, Martin.

Judge Cain was raised on his parents' farm in Oakway, S.C., working in the local cotton mills, and even serving as a student bus driver. He graduated from Oakway High School in 1979. After attending Anderson College from 1979 - 1980, he joined the Criminal Justice Program at the University of South Carolina, where Professor Steve Dillingham, now the director of the Transportation Safety Institute for the U.S. Department of Transportation, encouraged the Judge to consider a career in the law. Upon receipt of his B.S. in 1983, he began his first year at the U.S.C. School of Law while serving as the Residence Hall Director in the Office of Resident Student Development. During law school, he clerked in Jim Anders' Fifth Circuit Solicitor's Office and with the Kligman & Fleming law firm. He and Renee were married in the summer of 1985, prior to his third year in law school and her obtainment of a Masters Degree in Social Work.

Upon graduation, the Cains moved back to Oconee County and Judge Cain began his legal career with the law firm of Miley & Macaulay, working alongside present Circuit Court Judge Alexander S. Macaulay. Judge Cain later served in both the Oconee County Public Defender's Office and the Tenth Circuit Solicitor's Office before joining the firm of Brandt & Fedder. By the early 90's, the firm had become Brandt, Fedder, Graham & Cain, allowing partnership with Senator Lindsey Graham during some of his last days as a "practicing" attorney. Judge Cain handled numerous matters in civil and criminal practice and assisted the firm in obtaining one of the largest medical malpractice verdicts at that time.

Throughout most of the 1990's, while working in private practice, Judge Cain also served as the Oconee County Attorney. On February 9, 2000, Judge Cain was elected as a Family Court Judge for the Tenth Circuit, a position he held until his confirmation as Federal District Court Judge. Through appointment as an acting Associate Justice for the South Carolina Supreme Court, Judge Cain was involved in at least five separate matters with reported opinions.

Judge Cain has been active in many civic, community and professional organizations. He served on the Board of Directors for the United Way of Oconee County. He has been on the Board of Trustees for the Carolina-Georgia Blood Center, was a member of the South Carolina Association of County Attorneys and he and his family attend St. Luke United Methodist Church.

Judge Cain and his staff, including his assistant of 23 years, Jane White, have taken up residence in temporary offices at the Greenville County Federal Courthouse as his permanent office in Anderson is completed. Having admittedly spent little time in Federal Court given his eleven years on the Family Court bench, Judge Cain has been energized by his "reintroduction" to varying and interesting areas of the law. He has participated in Federal Court seminars in both Richmond, Virginia and our nation's Capitol to assist in assuming his responsibilities and has been impressed by the capabilities of the electronic filing system and the varying research tools and other technologies at his disposal – most of which were scarcely contemplated at the outset of his legal studies a quarter century ago.

Judge Cain graciously agreed to speak with us and address some questions as follows:

What factors led you to a career in the law?

History was always one of my most favorite subjects as a young student, and I enjoyed reading about the Founders of our country, many of whom were lawyers. This was probably the beginning of my

Continued on next page

interest in the law as a profession. My parents have been a great inspiration to me. My mother recently passed away, and she was the hardest working person I have ever known. Both parents instilled a work ethic in me that I hope carries through in my own career.

Who has been the biggest influence in your legal career?

I have been very fortunate to have the opportunity to practice law with seasoned, experienced and ethical attorneys. My mentors have included Judge J. Pat Miley, Judge Alex Macaulay, W. J. Fedder and Larry Brandt. I think I have drawn on the qualities of each of these lawyers and others to develop my own style of practicing law. As a young lawyer, I enjoyed trying cases in state court before Judges William B. Traxler, Jr., Frank Eppes, Howard Ballenger and Tommy Edwards. The integrity, wisdom, humility and wit of these judges had a positive impact on me as a lawyer and judge. I enjoyed practicing law before these judges.

What has been the most challenging aspect of transitioning from Family Court to presiding as a Federal District Court Judge?

Although the subject matter is much different, the basic approach to addressing the legal issues and reaching a resolution of a case is much the same. A judge must apply the law to a particular set of facts to resolve the case. The electronic case filing system is new to me. In state court, judges rotate from county to county, hearing cases on the docket for a particular term of court. In the federal system, cases are assigned to a judge who will be responsible for that case until its resolution, so that is different, but in a good way.

What are the mistakes you most often see lawyers making in cases before you that could easily be corrected?

I think sometimes we get so focused on the points we want to make in trial that we forget about the practical side of trying cases. We need to remember that the jury needs to be able to see and hear what the witness is saying during examination. Simple matters such as the marking and introduction of exhibits can appear cumbersome and distracting if not handled in the proper manner. Failure to make a clean and clear record may have an impact on appeal.

From your observations, how has the use of technology in the courtroom impacted trial practice? Do you have any recommendations regarding technology usage?

I am probably not the best person to give advice on the use of technology. However, following up on the previous answer, I think it advisable for lawyers to be very familiar with the technology to be used in trial, and would encourage the use of practice runs with equipment in the courtroom in advance of trial to avoid problems and delays. Technology has, of course, had a tremendous impact on the legal profession not only in the way trials are conducted, but also in areas such as legal research.

Counsel now takes an oath that requires fairness, integrity and civility not only to the court but also in all written and oral communications, has this been a problem that you have observed?

Having spent over eleven years as a judge in a setting where emotions can run the gamut from grief to joy, I have observed instances where attorneys would sometimes become personally involved in the dispute or have personality conflicts with opposing counsel. That cannot be allowed in the courtroom. Attorneys must be zealous advocates, but there is a line that must not be crossed. The oath we take requires that we act in a courteous and professional manner towards each other, litigants, witnesses and court staff. I have never had a problem in enforcing that rule and do not expect to in the future.

Is there a particular pet peeve that you have as it relates to conduct in your courtroom or for practitioners before you?

One thing I have observed is that sometimes, in the heat of the moment, people have a tendency to talk while another person is talking, whether it be a witness or another attorney. That creates problems for the court reporter and the record, and should be avoided. In addition, no judge likes to see a lack of preparation.

Any advice you might have for lawyers appearing in your courtroom?

I would not be so presumptive as to give advice to folks trying to make a living practicing law in today's environment. However, one suggestion would be that if there is some unusual issue or problem that is likely to come up at trial, communicate that to me so that we can, if necessary, get all the lawyers together to talk about it in advance. Finally, I take the mediation process very seriously, as it provides the parties with an opportunity to have some degree of control over their case which they lose once a trial starts. I would hope that all attorneys would strongly encourage their clients to enter into the mediation process with an open mind and in good faith.

Judge Cain welcomes the attorneys appearing before him to maintain open lines of communication and collegiality with each other and with the Court; any effort towards resolution or ensuring no undue surprise is time well spent for all. Ultimately, Judge Cain seeks to provide in his federal courtroom the same access to justice that he sought to provide in the Family Court. "A court is one place in our system of government where the rich person and the poor person are fed from the same spoon. It has always been my goal to treat everyone the same regardless of their station in life."

We congratulate Judge Cain on attaining his newest station in life, that of Federal District Court Judge.

2011 Annual Meeting Wrap Up

by Anthony W. Livoti

The Ritz-Carlton on Amelia Island once again played host to the Annual Meeting November 3-6. Over 90 attorneys and 45 judges (new record!) made the trip to North Florida for a great weekend of speakers and social activities. Thursday night kicked off with the traditional President's Reception on the lawn and many were fortunate enough to dine at Salt, the Ritz's unique restaurant. Friday started with a new event that is sure to become a repeat. Attorneys and judges alike arose early for a Judge's Breakfast and divided by regions to enjoy a relaxing time together to share a meal, share stories, and discuss issues in the profession. Everyone enjoyed this new opportunity to continue to develop relationships between the bar and the judiciary. The first speaker was Associate Justice Costa Pleicones who addressed the gathering on the state of the judiciary. Next, Chuck Rosenberg, a former Assistant U.S. Attorney, gave a riveting talk on the Zacarias Moussaoui trial he helped to prosecute. The room was held in rapt attention as Chuck played tape recordings used at trial from the 9/11 tragedy. It was a presentation no one will forget. Substantive breakouts were also held, as well as a state court judge's panel, with Judges James, Stilwell and Williams, moderated by our own Bill Howard. It was great to get tips on what to do and not to do in communicating with the court. Friday afternoon activities included golf, tennis, fishing and shopping, as everyone found something to do, or simply did nothing. Friday night was an oyster roast on the lawn, allowing everyone to enjoy great food and cool ocean breezes.

Saturday began with an ethics panel regarding the use of social media. Wendy Keefer moderated this panel with Lee Coggiola from the Office of Disciplinary Counsel, along with Rob Tyson. Professor John Yoo gave an entertaining and historical look at Presidential Power since 9/11. Our members got a glimpse into a recurring theme in our practice: bankruptcy. And who better than the three South Carolina Bankruptcy judges to present: Judge John Waites, Judge Beth Burris, and Judge David Duncan. Conducting voir dire and jury selection in the digital age is becoming more challenging and Lana Varney and Paulette Robinette gave a great talk exploring social media's affect on juror's attitudes and participation in trials. All in all, the speakers and programming were top notch. Saturday night concluded with the black-tie dinner and dance with music provided by The Voltage Brothers. It was a great conclusion to a fun-filled weekend. The Annual Meeting committee of Anthony Livoti, Bill Besley, and Eric Englebardt worked hard to present an entertaining program, but huge thanks goes to Aimee Hiers and her staff for executing another flawless meeting. See you at The Sanctuary on Kiawah Island for the 2012 Annual Meeting.

Young Lawyer Update

by Jared H. Garraux

First off, I would like to thank all of the young lawyers who offered their time and assistance to the SCDTAA during 2011. We had a very successful year, and we are looking forward to an even more successful 2012.

Recently, we expanded the Young Lawyers Division Committee to include representatives from across the State. Upon naming the representatives, we appointed each representative to a SCDTAA Committee.

Please join me in congratulating the newly appointed YLD Representatives for 2012: Claude Prevost (Summer Meeting Committee); Amanda Mellard (Substantive Law Committee); Trey Watkins (Sponsorship Committee); Erin Stuckey (Annual Meeting Committee); Michael Freeman (DefenseLine Committee); Cooper Wilson (Marketing Committee); Carrie Raines (Website Committee); Joseph Sandefur (Depo. and Evidence Boot Camp Committee); Derek Newberry (Website Committee); Andy Delaney (PAC Golf Committee); and Perry Buckner (Deposition and Evidence Boot Camp Committee).

In addition to its involvement in the committees listed above, the Young Lawyers Division will play an important role in many of the SCDTAA events throughout the year. The Trial Academy will take place in June in Charleston. The Young Lawyers Division will be called upon to assist the Trial Academy Committee with securing and/or serving as jurors and witnesses during the trials. If you would like to assist with this year's Trial Academy, please contact me or Jamie Hood at James.Hood@hood-law.com.

The SCDTAA Summer Meeting will take place from July 26th - July 28th at The Grove Park Inn in Asheville, NC. As always, the Young Lawyers Division will be responsible for organizing the Silent Auction, which will be held on Thursday evening, July 26th. Young lawyer participation is vital to the success of the Silent Auction. Therefore, if you would like to contribute an item to the auction, or if you know of an individual or a company that may be willing to contribute, please let me know. Proceeds from the Silent Auction will benefit local legal related charities.

Two instructional "boot camps" will be held during 2012. The first boot camp will take place in May in Columbia. The focus of the May boot camp will be workers' compensation law. If you are a young lawyer practicing workers' compensation law, you will not want to miss this class. The second boot camp will take place in September in Greenville. The September boot camp will focus on evidentiary issues and will be for any attorney, young or old. If you would like more information regarding either of these boot camps, please contact me.

Rounding out the year, the SCDTAA will host its Annual Meeting from November 8 – November 12. This year's meeting will be held at The Sanctuary on Kiawah Island. We have a wonderful program planned and the event should be well-attended by our Judiciary.

In addition to the events listed above, the SCDTAA will host numerous programs, classes, happy hours and meetings throughout the year. I would like to encourage all of the young lawyers to attend these events and get involved with the SCDTAA. As cliché as it sounds, you are the future of this great organization. Thanks again for your service, and I look forward to working with all of you throughout the year.

PAC Golf Tournament

April 25, 2012

Go to www.scdtaa.com for more information

Introducing the Summer Meeting

by Anthony W. Livoti

Make plans now to be at the Grove Park Inn July 26-28 for the SCDTAA Summer Meeting. What? No Joint Meeting? The Joint Meeting has grown up and become the Summer Meeting. The claims managers are still coming, but we hope other groups and organizations will become a part of a great weekend in the North Carolina mountains. Planning is already underway and several speakers are already lined up. Have a question about FOIA requests? Jay Bender has your answer. How do you deal with the media in your case? Come hear Andy Savage tell you how handle that pesky reporter. What do you do with the plaintiff's economist or life care planner? Dr. Perry Woodside can answer that for you. Are you wondering what state court judges think about motions practice and things we attorneys can do better? Judges Roger Young and Frank Addy will tell you what they think. Judge Mark Hayes has a great talk on ethics in the profession that you won't want to miss. In addition to our traditional breakouts, workers compensation lawyers will not want to miss this meeting. Walt Barefoot and Mark Allison are putting together a workers compensation program that will run as a parallel track to the regular program and will provide nearly 4 hours of programming and time with the commissioners. The Grove Park is always a great place to visit in the middle of a hot South Carolina summer; so make plans now to attend the SCDTAA Summer Meeting July 26-28, 2012.

2012 Annual Meeting
The Sanctuary on Kiawah Island

by William S. Brown

The 2012 Annual Meeting of the South Carolina Defense Trial Attorneys' Association will be held at The Sanctuary on Kiawah Island. This is a fabulous and new venue for our program. The Sanctuary is an amazing property and an ideal destination for what promises to be a tremendous meeting. The Sanctuary provides a wonderful combination of Southern hospitality, elegance, and relaxation. The beautiful surroundings of Kiawah Island afford the tranquility of the beach, ocean front dunes, natural environment, and marvelous, world-class golf courses.

The Annual Meeting Committee is working diligently to prepare a top level educational program to match the 5-star accommodations of The Sanctuary. Details regarding the educational courses of the meeting will be forthcoming.

You will not want to miss the 2012 Annual Meeting. We are excited about this year's meeting, the format changes which will be implemented to the meeting schedule, and the new venue at The Sanctuary on Kiawah Island. We look forward to seeing you at Kiawah November 8-11, 2012.

DRI UPDATE

DRI Update

by Samuel Outten

There are two DRI initiatives which I would like to bring to your attention.

First, there is a special offer from DRI as follows:

Lawyers who: a) have never been a DRI Member, b) are eligible to become a DRI member, and c) are a member of your SCDTAA, qualify for free one-year DRI membership and enjoy all the benefits of DRI membership, including:

Education: Committee-sponsored seminars, in-depth reference publications and webcasts are excellent resource tools. Committees: DRI's 29 Substantive Law Committees allow you to engage with Colleagues involved in your specific area of practice. Publications: DRI members receive For the Defense, In-House Defense Quarterly, Substantive Law Committee E-newsletters and DRI's weekly E-newsletter, The Voice. Networking: connect with friends, Colleagues, or potential clients at DRI seminars and the Annual Meeting

For those that no longer qualify for the "One Year Free", the annual fee is $250 for lawyers in private practice who devote a substantial portion of their professional time to the representation of businesses, insurance companies and/or their insureds, associations, or governmental entities in civil litigation.

Go to http://www.dri.org/Membership for online membership information with links to applications and other helpful information, or call Cheryl Palombizio, DRI Director of Member Services, at (312) 698-6207.

Second, any DRI member employed as a claims professional by a corporation or insurance company, who spends a substantial portion of his or her professional time hiring or supervising outside counsel in the representation of business, insurance companies or their insureds, associations or governmental entities in civil litigation, will be entitled to free attendance at any DRI seminar.

Any lawyer eligible for free DRI programming as set forth above, but who is not a DRI member, can attend one free DRI program if such lawyer is sponsored at the seminar by a DRI member and accompanied by the sponsoring DRI member at that seminar.

Any non-lawyer vice president, director or manager in charge of hiring or supervising outside counsel nationally or regionally (multi-state) for a corporation, third party administrator or insurance company is eligible for free seminar attendance once annually if such non-lawyer claims executive is sponsored by a DRI member and accompanied by the sponsoring DRI member at that seminar.

If anyone has any questions or comments regarding DRI, please call me. Thank you.

DRI Mid-Atlantic Regional Report

by Peggy Fonshell Ward

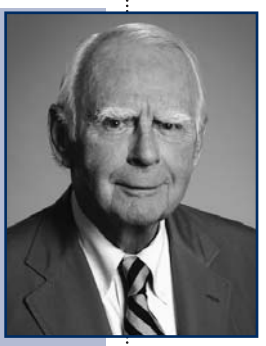
There is much excitement at DRI this year. We have substantially opened up more ways for DRI members to network and engage with clients and prospective clients while getting the benefit of DRI's incomparable education. Our most significant new program is the Claims Executive Program. Once per year, you can now bring a Claims Executive, lawyer or non-lawyer, who is responsible for hiring or supervising outside counsel, to any seminar without a registration fee. What an excellent opportunity to get time with the clients, show them the benefits you get from DRI and cement your relationships!

The Mid-Atlantic region is looking forward to our Regional Meeting, to be held this year in a joint session with the Central Region of West Virginia, Ohio, and Michigan. We will meet April 27-29 at the Greenbrier and the focus will be to help SLDOs come away with great new ideas for providing even better and more vibrant services to their members. The chance to exchange ideas and information with such a wide variety of state groups is going to be very invigorating!

ARTICLE

Reflections

by Benjamin Allston Moore, Jr.



Editors Note: Benjamin Allston Moore, Jr. was born in Charleston, South Carolina, on December 2, 1930. Mr. Moore graduated from the Episcopal High School in Alexandria, Virginia, in 1948, and then from Princeton University in 1952. Having taken Naval ROTC at Princeton, he was commissioned an Ensign upon graduation and served for two years as a line officer aboard the USS Thomas E. Fraser (DM24). Upon his release from the United States Navy in 1954, Mr. Moore entered the University of Virginia Law School, from which he graduated in 1957. He immediately joined his father's law firm, Moore, Mouzon and McGee, which then had three lawyers. That firm merged with Buist Buist Smythe and Smythe in 1970 to form Buist Moore Smythe McGee and grew to 45 lawyers prior to its merger with Womble Carlyle. Mr. Moore's practice, until recently, has always involved litigation, specializing in maritime law. His father's firm was the successor to one which had represented ship-owners in the Port of Charleston since the late 1800's, and from the start of his practice he became involved with maritime law. The firm then and now represents every ship which sails into the Port of Charleston, due to its representation of all of the worldwide "clubs", which provide Protection and Indemnity insurance coverage to vessels. During the course of his practice, he has been active in the MLA and the IADC, as well as the South Carolina Defense Trial Attorneys Association and the Southeastern Admiralty Law Institute, both of which he helped found. His emphasis now is upon trusts and estates, and the handling of the affairs of elderly clients. Mr. Moore was the first president of our association serving from 1968 to 1969. We asked him to share with us his recollections of the association and how it began. Below are his thoughts.

Sometime late in 1967, the Defense Research Institute suddenly appointed me the DRI South Carolina State Chairman. I was aware of the organization, which I think was rather small in those days, and I accepted the appointment. The hitch was that DRI wanted me to form an association of South Carolina defense attorneys. It didn't tell me how to do it, but it did say that it was trying to get such an organization going in every State and South Carolina needed one. And we did. I was trying cases against Randolph Murdaugh in Hampton, J.D. Parler in St. George, and J.P. "Preacher" Harrelson in Walterboro, and wasn't having much success. Maybe such an organization would help.

The obvious thing to do was to get help from other South Carolina defense lawyers. In the spring of 1968 I began calling lawyers in Columbia, Greenville, Florence and Spartanburg. I told each one that a defense association was needed and asked him (no women in those days) to join with me in getting one started. The responses I received were varied. Several said they were too busy to help. One or two said such an organization wasn't needed. Several laughed and said no such organization would ever succeed. But a valiant few were willing to try: Ed Mullins and Harold Jacobs in Columbia; Grady Kirven in Greenville; Weston Houck in Florence; Dana Sinkler in Charleston, and I think one or two others, including my partner, Peter McGee.

Since Columbia was central, I suggested we meet there, and during the spring and summer of 1968 I began driving to Columbia about once a month and meeting with the other lawyers. It was rough going at first, just trying to persuade the group that the effort was worthwhile. It took several months, I believe, but eventually we had the framework of a workable organization.

Then, I received word that a South Carolina organization of insurance claims adjusters was meeting at Hilton Head and through my contacts with Allstate and Nationwide adjusters, I asked if I could appear at their meeting and present our plan. We were invited and Peter McGee and I went to Hilton Head and made the pitch. The adjusters were enthusiastic, I reported back to the group, we adopted a Constitution and By-laws, and elected our first slate of Officers. I was rewarded with the first Presidency, and we began soliciting members for the new organization, which was originally called (I believe) The South Carolina Defense Trial Attorneys Association.

The first annual meeting I believe was held in Charleston, with only 10-12 lawyers attending. I remember Ed Mullins and Andrea stayed at my house, where my wife and I gave a supper party for the group. At the end of the meal I brought out a variety of after-dinner liqueurs which I had liberated from various foreign ships that I boarded as a part of my admiralty law practice. Ed, I remember, fell in love with a particularly delightful Greek liqueur and was a little shaky the following morning. The meeting was a great success, other annual meetings were held in Columbia and Greenville, and the rest is history.

Legislative Update

by Jeff Thordahl, SCDTAA Lobbyist

Following the turmoil and fallout from the resignation of Lieutenant Governor Ken Ard, Senate president Pro Tempore Glenn McConnell adhered to the state's constitution by ascending to the vacated position and was sworn in as Lieutenant Governor by Chief Supreme Court Justice Jean Toal. McConnell, who previously served as Senate Judiciary Committee Chairman, gave up perhaps the most powerful position in state government for a largely ceremonial one. His duties will now include presiding over the Senate during session and overseeing the state's Office on Aging. As a result of his move, Senator Larry Martin (R-Pickens) became Chairman of the Senate Judiciary Committee, Senator Jake Knotts (R-Lexington) became Chairman of the Rules Committee, and Senator Billy O'Dell (R-Greenwood) assumed his new role as Chairman of the Invitations Committee. A campaign then began for the Senate President Pro Tempore position pitting Majority Leader Harvey Peeler (R-Cherokee, Spartanburg) against Senator John Courson (R-Richland). The Senate's majority caucus split, with Senator Courson winning the position with the help of all but one Senate Democrat and a handful of Republicans. In addition to the President Pro Tempore position, Senator Courson will continue to serve as Chairman of the Senate Education Committee.

Senator Martin has been a strong advocate for Tort Reform over the last several years and chaired the Tort Reform Subcommittee. He was always willing to work overtime to help find compromise on issues involving strongly divided, powerful groups - keeping his eye on the need to make progress and not have the legislation die. As a non-lawyer businessman, Senator Martin has done a more than commendable job studying and learning complex legal issues. It is interesting to note that Senator Martin will have a primary challenge this year from a former House member. If senator Martin were to lose his bid for re-election, there would be a new Judiciary Committee chairman. Provided Senator Jake Knotts wins his re-election bid, he is line to becomes the next chairman of Judiciary under the current Senate Rules. Sticking with Senate elections, Senators Greg Ryberg (R-Aiken), Phil Leventis (D-Sumter), John Land (D-Clarendon) and Ralph Anderson (D- Greenville) have all announced their retirement.

The House side will also see notable changes generally and specifically affecting the legal community as well. Long-time chairman of the House Judiciary Committee, Jim Harrison (R-Richland), is retiring. This will result in a new Chairman next year. In addition several House members have announced their retirement. Many House and Senate seats have seen attorneys file in both open seats and against incumbents. The landscape could be quite different next year. All House and Senate seats are up for election this year.

The most significant legislative development this year for the legal community is perhaps the addition of several new judicial seats. While the budget is still being worked on it is becoming more and more clear that the General Assembly will authorize the addition of three new at-large circuit court seats and at least 3 new at-large family court seats. The House budget included money for the six new seats and the Senate appears likely to follow suit. Separate legislation will actually authorize the seats (H. 4699). Chief Justice Toal and others in the legal community have done a great job over the last few years making the case to the General Assembly that the workload on South Carolina Judges is higher than any other state and in most instances significantly so.

ARTICLE

Appellate Decision Opens the Door for Internet Sweepstakes in South Carolina....For Now

by Giles M. Schanen, Jr.[1]

On January 27, 2012, a Greenville County Circuit Judge issued an appellate opinion holding that the operation of an internet sweepstakes terminal in an establishment licensed to sell beer or wine does not violate South Carolina law. This opinion in *Greenville County Sheriff's Department v. Play 4 Fun, Inc.*[2] affirmed a prior order of a Greenville County Magistrate Court. It is believed to be the first appellate decision in the State which addresses the legality of internet sweepstakes, a controversial form of marketing which critics argue is video poker in disguise, and advocates contend is no different than the promotional sweepstakes that restaurants and other retail establishments have conducted for decades.

The *Play 4 Fun* decision will have significant ramifications. In the short term, it will fuel the influx of internet sweepstakes into restaurants, bars, and convenience stores across the State. Also, it will solidify South Carolina as the most recent in a series of "battleground" states in which the internet sweepstakes industry has resisted efforts by state legislatures, agencies, county governments, and municipalities to ban or regulate internet sweepstakes.

In addition to analyzing the *Play 4 Fun* opinion and its likely consequences, this article provides a basic overview of internet sweepstakes and their operation, explains the positions taken by both proponents and critics, and analyzes prior treatment of internet sweepstakes by South Carolina courts and agencies.

The Basics of Internet Sweepstakes

To understand internet sweepstakes and their operation, it is helpful to first consider the basics of the traditional promotional sweepstakes from which internet sweepstakes have evolved. Sweepstakes are marketing promotions that are designed to promote brand awareness and product sales while enticing customers to submit free entries into drawings for prizes. Sweepstakes entries are usually obtained through purchases of the sponsor's product. However, under the laws of most states, including South Carolina, it is unlawful to require a customer to provide consideration in order to enter a sweepstakes. Therefore, a key element of virtually all sweepstakes is that customers may enter without making a purchase, typically by mailing for a free entry.

Sweepstakes are operated by a wide variety of retail businesses. An example of a prominent national sweepstakes is the "Monopoly" sweepstakes, which McDonalds has operated in its restaurants since 1987. Participants can enter the Monopoly sweepstakes by making a purchase from McDonalds, or by mailing for a free entry. The Monopoly sweepstakes awards cash prizes of up to $1,000,000. [3]

Internet sweepstakes typically contain all the elements of a traditional sweepstakes. Internet sweepstakes virtually always promote a product or charitable organization; they allow entry either through purchasing product, making a charitable donation, or mailing in free of charge; and they are games of chance in which winning entries are predetermined. The distinguishing feature of internet sweepstakes is that participants submit their entries on computer terminals which use proprietary software to reveal the results in various types of entertaining displays that mimic popular games, ranging from pinball to poker. In other words, although the results are predetermined and participants' actions do not affect the outcome of their entries, internet sweepstakes can provide participants a simulated gaming experience in which they can win substantial cash prizes.

As a result of these entertaining features, internet sweepstakes are increasing in number in South Carolina in restaurants, bars, or other establishments which sell alcohol, and in "internet cafes" - stores where patrons can use computers to access the internet for a fee, and which typically offer additional services such as fax and copying. While it would be unusual for a bar or restaurant to contain more than three (3) terminals, internet cafes may contain more than thirty (30) terminals connected in a network.

Critics argue that internet sweepstakes are a form of gambling which function like traditional sweepstakes in order to take advantage of legal loopholes.

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They contend that the entertaining displays that are used to reveal results are indistinguishable from video poker, and are designed to create sweepstakes addicts. Some opponents of internet sweepstakes claim that the products promoted in the sweepstakes have no real value, and that participants purchase them solely in order to play the sweepstakes. In their opinion, when people spend large amounts of their time and money in order to have the chance to win cash prizes, it is gambling in its purest form.

In contrast, advocates argue that internet sweepstakes are no different than promotional sweepstakes that restaurants, grocery stores, and other businesses have operated for years without opposition. They claim that participants are not gambling because they are not risking their money by playing the sweepstakes; rather, they are playing entries they received free of charge after purchasing a product, making a charitable donation, or requesting entries in the mail. Supporters contend that the simple fact that the results are revealed in an entertaining manner does not transform a long-accepted form of marketing into gambling.

Reggie Lloyd, who until July 2011 was chief of the State Law Enforcement Agency ("SLED"), the agency charged with seizing illegal gambling machines, is an ardent supporter of internet sweepstakes. Lloyd, who is now in private practice in Columbia, recently told the Associated Press "[t]hese are legal. It's a fixed sweepstakes. Your odds don't vary. The prize is already set. It's like Publishers Clearinghouse – you've either won or you haven't." [4]

Legal Attacks on Internet Sweepstakes

Since internet sweepstakes terminals began appearing in South Carolina over the last year, they have been seized frequently by law enforcement. For example, on September 27, 2011, Beaufort County sheriff's deputies raided a Bluffton business and seized twenty-four (24) terminals. [5] Similarly, in September 2011, twenty (20) terminals were seized by Georgetown County sheriff's deputies in a raid of a Murrell's Inlet business.[6] Terminals also have been seized in several other counties, including Greenville, Horry, and Sumter.

After terminals are seized, they must be brought before a county Magistrate to determine whether they violate South Carolina law. [7] In these proceedings, the legality of internet sweepstakes is commonly attacked on two grounds – first, that internet sweepstakes require consideration (and therefore constitute gambling) because participants do not receive anything of value for their purchases; and second, that the sweepstakes terminals violate § 12-21-2710 of the South Carolina Code of Laws, which declares illegal certain types of machines that can be used for gambling purposes. Section 12-21-2710 provides as follows:

> It is unlawful for any person to keep on his premises or operate or permit to be kept on his premises or operated within this State any vending or slot machine, or any video game machine with a free play feature operated by a slot in which is deposited a coin or thing of value, or other device operated by a slot in which is deposited a coin or thing of value for the play of poker, blackjack, keno, lotto, bingo, or craps, or any machine or device licensed pursuant to Section 12-21-2720 and used for gambling or any punch board, pull board, or other device pertaining to games of chance of whatever name or kind, including those machines, boards, or other devices that display different pictures, words, or symbols, at different plays or different numbers, whether in words or figures or, which deposit tokens or coins at regular intervals or in varying numbers to the player or in the machine, but the provisions of this section do not extend to coin-operated nonpayout pin tables, in-line pin games, or to automatic weighing, measuring, musical, and vending machines which are constructed as to give a certain uniform and fair return in value for each coin deposited and in which there is no element of chance. [8]

Prior to the appellate opinion in *Play 4 Fun*, there was very little meaningful guidance as to the legality of internet sweepstakes in South Carolina. In 2011, two widely circulated Magistrate Court opinions found that specific internet sweepstakes terminals seized in their counties were legal. First, in April 2011, a Greenville County Magistrate Court held that the sweepstakes terminals that were later addressed by the circuit court in *Play 4 Fun* are legal because they comply with § 61-4-580(3) of the South Carolina Code of Laws, which the Magistrate Court held is a statutory exception to § 2710 that is available to holders of permits to sell beer and wine (more on this exception later in the article).

Next, in December 2011, a Georgetown County Magistrate Court ruled that the twenty (20) terminals seized in Murrell's Inlet fully comply with South Carolina law.[9] After first discussing the operation of the sweepstakes and finding that it does not require consideration and is not gambling, the Georgetown Court focused on the issue of whether the terminals are illegal devices under § 2710. The Court found that the terminals are legal because: (a) they do not accept or dispense currency or tokens; (b) the software is not designed to deliver a gaming outcome; and (c) the system does not utilize a random number generator that determines outcomes. [10]

In contrast to these Magistrate Court opinions, on June 6, 2011, the Office of the South Carolina Attorney General issued an opinion letter to the Sheriff of Beaufort County which concludes that any internet sweepstakes terminal which simulates poker, bingo, keno, lotto, blackjack, or craps is *per se*

illegal contraband under § 2710.[11] In the seventeen (17) page letter, which includes a detailed discussion of the legislative history and intent of § 2710, the Attorney General's office also finds that § 580(3) – the statute relied upon by the Greenville County Magistrate in holding that the Play 4 Fun terminal is legal - is not an exception to § 2710, and does not make legal devices that are contraband *per se* simply because they are operated in establishments that sell alcohol. [12]

It was against this conflicting and uncertain backdrop that the Greenville County Circuit Court's appellate opinion in *Play 4 Fun* was issued on January 27, 2012.

The *Play 4 Fun* Opinion

The *Play 4 Fun* case involves a standalone "arcade-style" sweepstakes terminal located in a retail establishment in Greenville County. The sweepstakes is conducted by Products Direct, LLC ("Products Direct"), which sells a variety of consumer products via its website. In return for cash inserted into the terminal's bill acceptor, the terminal dispenses discount coupons worth twice the amount of cash inserted. Patrons can visit Products Direct's website and apply the discount coupons toward the purchase price of a variety of products. [13]

Patrons are awarded free entries into the sweepstakes through their purchase of discount coupons. Patrons also can receive entries without purchasing discount coupons by mailing for a free sweepstakes entry code. Once patrons have obtained their sweepstakes entries, they can use the terminal to choose from among eight (8) games, including poker, keno, and bingo, to reveal whether they have won a prize. In the alternative, patrons can elect to reveal their results instantly, without playing any of the games. Patrons with winning entries can claim cash prizes from the store's clerk.[14]

The *Play 4 Fun* terminal was seized by the Greenville County Sheriff's Department and brought before a Greenville County Magistrate for a determination of whether it violates § 2710 or any other law.[15] On April 7, 2011, the Magistrate Court issued an opinion holding that the terminal is legal, and ordering that it be returned to its owner.

In reaching its decision, the Magistrate Court initially noted that the terminal likely violates § 2710. However, the Court found that § 580(3) provides an exception to § 2710. The Court held that the terminal complies with § 580(3) and, therefore, is legal.[16]

The State appealed to the Greenville County Circuit Court, and a hearing was held on October 25, 2011. On November 11, 2011, the Circuit Court issued a form order affirming the Magistrate Court's decision with no explanation. On January 27, 2012, the Circuit Court issued a substantive opinion explaining the grounds for its decision.

The appellate opinion notes that the State did not challenge the issue of whether the terminal complied with § 580(3) and, therefore, the only issue before the Court was whether § 580(3) provides an exception to § 2710's declaration that certain types of machines are illegal *per se*. [17]

The Court then entered into an analysis of the statutory construction of § 580(3), which provides in pertinent part as follows:

> No holder of a permit authorizing the sale of beer or wine or a servant, agent, or employee of the permitee may knowingly commit any of the following acts upon the licensed premises covered by the holder's permit:
>
> …
>
> (3) permit gambling or games of chance **except** game promotions, including contests, games of chance, or sweepstakes in which the elements of chance and prize are present and which comply with the following:
>
> (a) The game promotion is conducted or offered in connection with the sale, promotion, or advertisement of a consumer product or service, or to enhance the brand or image of a supplier of consumer products or services;
>
> (b) No purchase payment, entry fee, or proof of purchase is required as a condition of entering the game promotion or receiving a prize; and
>
> (c) All materials advertising the game promotion clearly disclose that no purchase or payment is necessary to enter and provide details on the free method of participation.
>
> …
>
> A violation of any provision of this section is a ground for the revocation or suspension of the holder's permit. [18]

The Court stated that § 580(3) and § 2710 deal with the same subject matter – games of chance or sweepstakes – and must be construed together, if possible, to produce a single, harmonious result.[19] The Court then found that, by its plain language, § 580(3) is clearly an exception to the general prohibition set forth in § 2710. The Court noted that § 580(3) begins by reiterating the prohibition on "gambling and games of chance" – a category that includes machines outlawed by § 2710 – but then states that the prohibition does not apply to promotions that meet the criteria listed in subsections (a)-(c) of § 580(3). The Court concluded that, because

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these criteria do not restrict the method by which games of chance or sweepstakes are delivered to participants, a sweepstakes terminal that meets the criteria is exempted from the general prohibition of § 2710. [20]

The Court also discussed several other rules of statutory construction which support its holding that § 580(3) is an exception to § 2710, including the following:

- *If two statutes appear to conflict, the more specific statute should be considered an exception to the general statute.*[21] The Court noted that § 580(3) is more specific than § 2710 because it applies to a limited number of people (holders of permits to sell beer or wine) and is limited to a particular type of gaming (game promotions used to promote a product or service). Therefore, the specific permission contained in § 580(3) operates as an exception to the general prohibition contained in § 2710.

- *If two statutes appear to conflict, the more specific statute should prevail over the later in time general statute.*[22] The Court noted that the Legislature was plainly aware of the more specific statute, § 580(3), when it approved the amendments to § 2710 that prohibit certain video gaming machines, as § 580(3) had been enacted the month prior. In enacting the amendments to § 2710, the Legislature expressly provided that they would not affect any current law which was not specifically modified or expressly repealed. The amendments to § 2710 do not mention § 580(3). Accordingly, § 580(3) survives the later enacted amendments to § 2710. [23]

The Court also based its decision on two South Carolina Supreme Court cases which have impliedly recognized § 580(3) as an exception to § 2710. The Court first discussed *Sun Light Prepaid Phonecard Co. v. State*, 600 S.E.2d 61 (S.C. 2004), where the appellants argued that their promotional scheme, which involved the sale of prepaid long distance phone cards, was permitted under § 580(3) as an exception to § 2710.[24] In affirming the decision below that the scheme was illegal, the Supreme Court did not rule that § 580(3) was not an exception to § 2710. Rather, the Supreme Court ruled that the scheme did not satisfy the requirements of § 580(3).[25] Furthermore, in his dissenting opinion, Justice Pleicones specifically referred to § 580(3) as an "exception" to Section 2710, a characterization with which Judge Pieper agreed. [26]

In *Ward v. West Oil Co.*, 692 S.E.2d 516 (S.C. 2010), the Supreme Court revisited its earlier opinion in *Sun Light*. [27] The Supreme Court stated that in *Sun Light* it found that phone cards and dispensers used in a promotional scheme "*were not exempt* under § 61-4-580" because they were not a legitimate promotion or sweepstakes.[28] Based on *Sun Light* and *Ward*, the *Play 4 Fun* Court found "it is clear that the South Carolina Supreme Court recognizes § 580(3) as an exception to § 2710." [29]

For these reasons, the *Play 4 Fun* Court found that § 580(3) plainly creates an exception to § 2710, meaning that sweepstakes terminals which may be illegal anywhere else in the State may be lawfully operated in establishments which possess permits to sell beer or wine. The Court's conclusory paragraph confirms that the Court recognizes the possible ramifications of its decision:

> The court is keenly aware of the checkered history of video gambling in our state, and the intense policy debate that occurred in the 1990's culminating in the passage of Section 12-21-2710. The court is also mindful that some may view this decision as letting the proverbial camel's nose under the tent of the prohibition of video poker. Trial courts do not set policy; instead they attempt to apply the plain language of statutory law to concrete disputes. This task entails discerning the intent of our Legislature – by using the words they carefully chose – to determine the legality of the conduct of the parties. This court has concluded that the promotion at issue here constitutes legal conduct as authorized by Section 61-4-580(3). Outside of an appeal, the remedy for any dissatisfaction with this conclusion is properly addressed to the Legislature, not this court. The Legislature may amend the statute; this court cannot. [30]

The Aftermath of *Play 4 Fun*

In the short term, the *Play 4 Fun* decision opens the door for the legal operation of certain internet sweepstakes in establishments holding permits to sell beer or wine. It is reasonable to expect operators to act quickly to take advantage of the safe harbor created by the decision, which will result in an influx of internet sweepstakes terminals into bars, restaurants, and similar establishments where alcohol is sold.

However, the lasting impact of the decision will be to hasten the inevitable confrontation between advocates of internet sweepstakes and those seeking to outlaw them. In fact, opponents of internet sweepstakes are already gearing up for a fight. State Representative Phyllis Henderson (R-Greenville) recently offered a bill designed to outlaw the use of "casino-type" video games in connection with internet sweepstakes.[31] State senators are reportedly considering similar legislation. Should the Legislature move forward on the issue, a major chal-

lenge will be drafting a bill that targets internet sweepstakes that simulate gaming, but continues to permit the traditional sweepstakes offered by retail establishments such as restaurants and grocery stores.

Furthermore, there likely will be pronounced efforts by county and municipal governments to regulate internet sweepstakes. For example, Charleston City Council recently moved to impose a six (6) month moratorium on approving zoning, permitting, and licensing for any new internet cafes or arcades, presumably to allow for an investigation of the impact of internet sweepstakes on the city.[32] Also, counties and municipalities may impose steep taxes on revenue generated through the operation of internet sweepstakes, as they have done in other states where internet sweepstakes are prevalent.

Current SLED Chief Mark Keel is taking a wait-and-see approach. Keel said that SLED will not dedicate money and agents to make cases against people operating internet sweepstakes until the sweepstakes' legality is more clearly determined by the court system.[33] The court system will have the opportunity to further address the issue, both as to terminals that have already been seized and those which will be seized by local law enforcement in the coming months. However, it seems likely that the result will be more conflicting decisions by county Magistrates and circuit courts, which will provide little clarity.

While it is impossible to predict with any degree of certainty whether internet sweepstakes will survive after the dust settles, both the Legislature and the appellate courts undoubtedly will play a large role in the outcome. One need only look to North Carolina for an example of how the conflict may play out. There, internet sweepstakes began to appear shortly after video poker was banned by the state legislature in 2006. Since that time, the legislature has twice enacted laws designed to outlaw internet sweepstakes which simulate gaming. The first law, enacted in 2008, proved ineffective, as courts ruled that various internet sweepstakes terminals did not violate the law.34 A subsequent statute enacted in 2010 contains a catchall provision which seemingly encompasses all forms of internet sweepstakes that simulate gaming. However, in late 2010 a North Carolina Superior Court ruled that the catchall provision is unconstitutional on first amendment grounds.[35] While the North Carolina Court of Appeals mulls the issue, internet sweepstakes continue to operate in large numbers.[36] Given the high stakes involved and the polarizing nature of the issue, it is not difficult to imagine a similar prolonged conflict in South Carolina.

Conclusion

In *Play 4 Fun*, the Circuit Court ruled that internet sweepstakes which comply with § 580(3) are legal in establishments holding permits to sell beer or wine, even if the terminals on which the sweepstakes are played would otherwise violate § 2710. In the short term, this opinion provides a safe harbor for the operation of internet sweepstakes in South Carolina. However, the ultimate survival of internet sweepstakes will not be determined until the State's Legislature and appellate courts weigh in. While the final outcome is impossible to predict, it seems certain that the process of arriving at that outcome will be lengthy, with many twists and turns along the way. While the battle unfolds, it is a safe bet that internet sweepstakes will continue to thrive in South Carolina.

Note: On March 16, 2012, after this article went to press, the Circuit Court issued an Order granting the Sheriff Department's Motion to Alter or Amend Judgment, rescinding the Play 4 Fun Opinion, and remanding the case for further development of the factual record. Regardless of the outcome on remand, the Court likely will be required to again address the core issue of whether § 580(3) creates an exception to § 2710. In the meantime, it remains to be seen whether the Play 4 Fun Opinion, while not legally effective, will have practical value to sweepstakes operators and law enforcement seeking guidance on the legality of sweepstakes in establishments licensed to sell beer or wine.

Footnotes

1 Giles Schanen is a partner in the Greenville office of Nelson Mullins Riley & Scarborough, LLP. He focuses his practice on business litigation, product liability, and sweepstakes/promotion law.

2 C/A No. 2011-CP-23-2657 (Jan. 27, 2012).

3 http://www.mcdonalds.com/us/en/monopoly.html

4 Meg Kinnard, "Former SLED Chief Lloyd Defends New Gaming Machines," The Post and Courier (Charleston, S.C.), February 12, 2012, accessed http://www.postandcourier.com/news/2012/feb/12/former-sled-chief-lloyd-defends-new-gaming-machine/?print.

5 Allison Stice, "Legality of Confiscated Bluffton Sweepstakes Machines Argued; Ruling Expected Next Week," The Island Packet (Hilton Head - Bluffton, S.C.), February 8, 2012, accessed http://www.islandpacket.com/2012/02/08/1957465/legality-of-confiscated-bluffton.html.

6 Ryan Naquin, "SLED Chief Calls Illegal Gaming Law Confusing," CarolinaLive.com, WPDE News Channel 15 (Myrtle Beach, S.C.), September 26, 2011, accessed at http://www.carolinalive.com/news/story.aspx?id=667534.

7 S.C. Code Ann. § 12-21-2712.

8 S.C. Code Ann. § 12-21-2710.

9 *Georgetown County Sheriff's Office v. 20 Murrells Inlet Sweepstakes HEST Sweepstakes Management System machines*, C/A No. 2011/CV/221051092

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TRIAL ACADEMY
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SUMMER MEETING
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Fall

ANNUAL MEETING
November 8-11
The Sanctuary
Kiawah Island, SC

ARTICLE

Less is NOT More in Sustainable Design Building Contracts

by Caleb M. Riser [1]

"Less is more"[2] is a phrase often attributed to German-born architect and father of the modern steel and glass skyscraper, Ludwig Mies van der Rohe.[3] I remember one of my grizzled architecture school professors hammering this philosophy into my first-year design class. The professor actually practiced under van der Rohe and learned firsthand that minimal embellishment can often produce the richest architectural expression. The same concept does not apply to legal documents, however, especially in contracts for design services in a new era where sustainable ("green") design – concepts that include making a building through its siting, construction and performance, more environmentally friendly – is more prevalent. For several years attorneys have watched the building design industry absorb the philosophy of green building design and wondered when these new design efforts would lead to a new wave of litigation. The litigation tide regarding green building design has not risen, but that does not mean sound principles about contract drafting should be ignored. This article briefly lists some key concerns for design professionals to contemplate before embarking on the next project which includes sustainable design services, as well as some resources for getting ahead of the curve.

First, contracts should include explicit language which defines green terminology, including if the project will incorporate sustainable concepts or be officially offered for recognition by a certifying authority[4]. The model language of the American Institute of Architect's (AIA) new B201-2007 lists, among others, sustainable "objectives," "measures" and the appropriate "documentation" as terms which designers should consider defining in their agreements.[5] Specifically, the agreement should address with detail what sustainable design concept goals will be sought, how the parties intend to accomplish those goals and who will be undertaking those measures. By way of example, a project may be designed to reach LEED Gold Certification, a sustainable plan has been approved and implemented to track the progress of achieving the certification and the architect will collect and submit the necessary documentation to the U.S. Green Building Council for consideration. The contract should also clearly delineate which rating system, if any, (LEED[6], Energy Star[7], Green Globes[8], etc.) is being used and what level designation is the goal. Clearly defining terms in the contract may avoid disputes later if goals are not reached or there is a dispute over the services provided.

One such case where defining terms and conditions of certification would have helped the parties to a construction contract is the Maryland case *Southern Builders v. Shaw Development*[9]. The developer sought to build a mixed-use condominium development. According to the project manual the project was designed to comply with Silver LEED Certification level. Also tied to the project's sustainable design goal was a state tax credit which required the project to actually reach LEED certification and conform to a rigid delivery schedule. When the project ran over budget and past the anticipated schedule, a mechanic's lien was filed by the contractor for payment. The resulting counterclaim from the developer accused the contractor of numerous construction defects, as well as liability for the project's failure to achieve LEED certification and for the resulting $635,000 in damages associated with unreached tax credits! The suit settled before reaching a court's determination of the rights and responsibilities of the parties, but a review of the construction contract reveals a sufficient lack of any definitions for the sustainable design concepts, certifications or scope of the subsequent responsibilities of the parties for the certification.

With lessons learned from the *Southern Builders* case, design contracts with sustainable components should always clearly state the scope of design services offered by the parties. The contract language should not only identify which green services are being provided and by which party, but also who is responsible for the documentation and/or certification of the building. This requires careful examination of whether the design professional is assuming additional liability by guaranteeing either the building's certification or, much to the designer's chagrin, its sustainable performance after completion. Regarding certification, it is highly recommended that contracts explicitly state that the

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project's certification is the decision of the authority alone, regardless of the designer's role in collecting or submitting necessary documentation to be reviewed by the authority. Also of concern, many professional liability insurance policies do not extend coverage to such express warranties so a design professional should consult their insurance agent or carrier to discuss their coverage before signing any contracts for green design services. While making guarantees is in your agreements is not advisable, even if a designer is willing to assume additional liability, financial penalty or incentive for its sustainable design services, the agreement should clearly define how and when payment is made, making note that substantial completion does not include the period where any green certification is evaluated or awarded (often up to 6-18 months), as well as how damages or incentives will be awarded for the project's schedule, rating achievement or building performance.

Finally, a design services contract regarding sustainable design should specifically address the products used in construction. As green building technology continues to develop so does the likelihood that contractors and designers will be tempted to use a product with little to no industry track record. Contracts should address the submittal or substitution of products and who is responsible for their performance. Best practices mandate that the designer make special emphasis to document their own statements to the owner regarding such products in the contract document and construction administration phases, especially if alternative products are selected over the recommendation of the designer.

Two national resources have developed new contract documents which address these and other sustainable design related questions – the AIA with its revised Document B214-2007 and ConsensusDOCS with ConsensusDOCS 310. These organizations have developed resource guides which explain the modification of their standard documents and how sustainable design services are addressed in the new versions (AIA Document D503-2011 and the ConsensusDOCS Guidebook). Also, helpful is a book entitled Risk Management for Design Professionals in a World of Change, edited by J. Kent Holland and published by *a/e ProNet*. The book explores green design concepts, contract language and coverage for these agreements, as well as new construction industry concepts of integrated project delivery (IPD) and building information modeling (BIM). Designers should seek out these resources, pour over their agreements before signing and consult an attorney to evaluate their scope of professional service and how the agreement best protects their goals and legal interests.

While a few more words may be necessary in your contracts, the peace of mind achieved by knowing your agreements give you adequate protection reminds me of another phrase attributed to Mies van der Rohe: "the devil is in the details."

Footnotes

1 Caleb Riser received his Bachelor of Architecture degree from the University of Tennessee School of Architecture and Design and spent six years in the Atlanta, GA office of international design firm tvsdesign working in their government and corporate office design studios. After Mr. Riser's graduation from Regent University School of Law he has been practicing full-time in the Columbia, SC office of the law firm of Richardson Plowden & Robinson, P.A. in their construction litigation practice group.

2 See http://www.guardian.co.uk/artanddesign/2009 may/14/ mies-van-der-rohe-chicago-demolition

3 Ludwig Mies van der Rohe (1886-1969) was born in Aachen, Germany, but ended his practice in Chicago, Illinois after immigrating to the United States in the mid 1930s.. Beginning his architectural design career in the early 1900s he moved from traditional and locally aesthetic design concepts to the steel and glass minimalism that defined his "International Style" architecture and corresponding furniture design. His most famous works include the Barcelona Pavilion (and famous chair to match the building), Villa Tugendhat, Farnsworth House, Crown Hall at the Illinois Institute of Technology and the Seagram Building in New York City. More information on his life and work (http://www.miessociety.org).

4 Certifying authorities are organizations, both private and governmental in nature, which recognize a building project for its sustainable design attributes. The recognition is often tiered, like the US Green Building Council's LEED program, where building's incorporating the most sustainable materials or operating systems receive higher recognition. The governmental rating systems may or may not be attached to tax credits for building owners and designers.

5 AIA A201-2007 § 1.1.9 Special Definitions

6 Leadership in Energy and Environmental Design. It is a program of the U.S. Green Building Council. (http://www.usgbc.org/DisplayPage.aspx?CMSPageID=1988)

7 A joint program of the U.S. Departments of Environmental Protection and Education. (http://www.energystar.gov/index.cfm?c=about.ab_index)

8 System used in the United States and Canada and operated in the U.S. by the Green Building Initiative.(http://www.greenglobes.com/about.asp)

9 *Southern Builders, Inc. v. Shaw Development, LLC,* C/A No. 19-C-07-011405 (Somerset County, Md.).

ARTICLE

Is Online Dispute Resolution Coming to an Area Near You?

by Wendy J. Keefer

Alternative Dispute Resolution (ADR) rose in popularity as a way more efficiently to resolve legal disputes. Whether mediation, arbitration or some other form of ADR, lawyers, judges, and particularly corporate parties to legal disputes welcomed ADR as a way to speed up resolution of matters at a cost typically less than full litigation of the same matter. In the years since the introduction of ADR methods, concepts of mediation and arbitration are well known not only to those in the legal community but to the general public as well. But just as with industrial advancement, it should come as no surprise that technology would make its way into the ADR process.

Despite the hopes of lower costs associated with arbitration, commercial arbitration is believed by many companies to be too costly. In response to concerns about these costs, particularly in less complicated matters, General Electric decided in 2009 to test an online dispute resolution system.[1] Online dispute resolution is now mandatory for some of GE's oil-and-gas division vendors, mainly in Italy, where the dispute involves no more than approximately $65,000.[2]

> The company's system involves blind bidding online to see if the parties agree on a settlement amount. If that doesn't pan out, an arbitrator rules,[3] but communicates only online and without a hearing.[4]

Use of the online dispute system includes a $500 fee to be paid by the claimant, but ultimately to be split between the parties if settlement is reached during the online process. The claimant provides a written statement of the claim. The opposing party then has twelve (12) days for provide a response. Documents may be uploaded by the parties for ultimate consideration by an arbitrator if settlement is not reached through the online settlement negotiation process.[5] These documents, unlike the offers and demands of the parties can be accessed and reviewed by the opposing party once uploaded.[6] Blind bidding involves the entering of three proposed settlement amounts by each party in each of three rounds of bidding. If the offer and demand overlap in any round, a settlement is reached.[7]

Failure to reach a settlement sends the dispute to online arbitration, requiring a $1,000 fee by the claimant.[8] That fee is recoverable if the claimant is the prevailing party in the arbitration.[9] The arbitrators of these GE disputes are engineers rather than lawyers.[10] This online arbitration process is believed to correct one of the primary problems with traditional arbitration – that the arbitrator typically controls the procedure and all too often establishes or adopts a procedure that mirrors traditional litigation.[11] Such procedures reinsert the inefficiencies of litigation that arbitration was intended, at least in part, to avoid.

The online arbitration system used by GE involves no witnesses, no lawyers, and no hearing.[12] Decisions are to be made solely on the parties' submission of documents.

Concerns exist that such an online system, which system deals only with money, eliminates a claimant's way to tell his story, vent, or otherwise feel heard. A benefit provided to claimants in trials, as well as most traditional mediations and arbitrations.

> "Some people file claims because they see dollar signs. But many people who file claims are just totally upset and feel a sense of injustice," says New York City Comptroller John Liu, who last year axed a similar online dispute-resolution approach in the city.[13]

GE and the City of New York are not alone in the adoption of online dispute resolution. Over 40 million disputes are handled each year online by eBay.[14]

Company Cybersettle, the technology used by GE in its online dispute resolution system, boasts success in the area of insurance and subrogation claims.[15]

> Cybersettle grew out of a 1995 encounter between seasoned trial attorneys Charles Brofman and James Burchetta who were representing opposing sides in attempting to settle an insurance claim. Jim, who in this case was representing the plaintiff, had demanded tens of thousands of dollars more than the amount Charlie, the defense counsel, was willing to offer. Both parties were well aware of what amount would eventually settle this case, but neither wanted to compromise his bargaining position – to on to court they went.
>
> In the courthouse, they agreed to secretly write down their bottom line numbers and hand them to a court clerk, who was

Continued on next page

> instructed to give them a "thumbs-up" if they were within a few thousand dollars of each other. If the case didn't settle, the clerk would destroy the papers and never reveal the figures. He flashed a "thumbs-up." The amounts were within $1,000 of each other. They split the difference and settled the case within minutes.[16]

The real questions for the legal community include whether online dispute resolution works, whether it works any better or more efficiently than traditional ADR proceedings or even less formal negotiations between and among lawyers, and whether it poses a threat to the use of lawyers to facilitate dispute resolution.

The first point to be made is that many of the matters submitted to online dispute resolution may actually be handling disputes that otherwise were not being handled at all (i.e., not those claims in which a lawyer, mediator, arbitrator, or court would ever have been involved prior to the online dispute resolution availability). Indeed, the focus on smaller valued claims provides a method of dispute resolution where otherwise traditional forms of litigation or even ADR could cost more than the claim at issue.

And, the online dispute process may better avoid the adverse or hostile positioning parties take in traditional dispute resolution platforms, preserving existing and ongoing relationships.

> The ability to resolve disputes on-line through a speedy and cost-effective process is especially helpful for disputes where – as it is often the case with our suppliers – both sides have an ongoing commercial relationship. We will sometimes have small disputes, but we also have an interest in preventing them from growing into lengthy and contentious legal battles. The ODR system we've adopted provides a lean platform for each side to effectively resolve disputes where the real issue at stake is the amount of damages (quantum) rather than the liability (an). [17]

Questions exist in online proceedings how an arbitrator could possibly evaluate credibility of witnesses, often the linchpin of any dispute decisionmaking. The value of the human element cannot be underestimated.

Cybersettlements can be effective. For example, following Hurricane Katrina online settlement systems were used to resolve claims quickly. Quick decisions were necessary given the volume of claims following the natural disaster that impacted so many. That said, even with the advent and potential increased usage of online dispute resolution systems, the advice of counsel through such processes and the need for counsel and other professional advisors and in-person mediators and arbitrators remain necessary in more complex disputes where pros and cons of the unpredictable litigation process can be weighed and discussed.

As technology develops, the obligation of the legal profession is to ensure that efficiency does not trump the law or the best interests of the parties involved. In that regard, it will be the legal professions job, along with legal services clients, carefully to consider when online dispute resolution systems serve everyone's interests bests and when it still remains a better option to get the parties together in one physical location either to reach a mutual resolution or to submit their claims and defenses to a decisionmaker poised not only to apply legal standards and contractual terms, but to evaluate credibility and persuasiveness – too qualities, to this author's knowledge, not yet manageable by electronic devices.

Footnotes

1 *See, e.g.*, Vanessa O'Connell, At *GE, Robo-Lawyers*, wsj.com, available at http://online.wsj.com/article/SB10001424052970203633104576620902874155940.html; *see also Jamie Maples, GE Oil & Gas – Putting the A into ADR*, The Lawyer (online) (Nov. 16, 2011), available at http://www.thelawyer.com/ge-oil-and-gas-putting-the-a-into-adr/1010265.article.

2 *Id*.

3 The International Centre for Dispute Resolution (ICDR), a division of the American Arbitration Association, designed the online arbitration process for GE. That system is now available for use by others through the ICDR's Manufacturer/Supplier Online Dispute Resolution (MSODR) Program.

4 O'Connell, *supra* note 1.

5 *See* O'Connell, *supra* note 1; *Maples, supra* note 1. *See also* Michael McIlwrath, *Anti-Arbitration: Coming Soon to a Commercial Near Year? Inexpensive On-Line Mediation and Arbitration,* Kluwer Arbitration Blog (Oct. 31, 2010), available at http://kluwerarbitrationblog.com/blog/2010/10/31/anti-arbitration-coming-soon-to-apcommerical-dispute.htm

6 *Id*.

7 *Id*

8 *Id*.

9 *Id*.

10 *Id*.

11 *Id*.

12 *Id*.

13 O'Connell, *supra*, note 1. New York used an online dispute resolution process for small personal injury and property damage claims. Put into effect in a few years prior, by 2009 the system reportedly resolved more than 4,000 personal injury claims for about half the cost of the average cost of litigation for the same size matters. Id. Mr. Liu ceased the online system and replaced it with in-house claims adjusters, believing that approach to be less expensive than the costs to use the online system provided by company Cybersettle. *Id*.

14 *See* Marta Poblet, *Introduction: Bringing a New Vision to Online Dispute Resolution*, p. 2, 5th International Workshop on Online Dispute Resolution, available at http://ceur-ws.org/Vol-430/Paper1.pdf.

15 http://www.cybersettle.com.

16 http://www.cybersettle.com/pub/home/about/history.aspx (last visited Feb. 14, 2012).

17 GE Oil & Gas Supply Chain General Counsel, Georgia Magno. McIlwrath, *supra* note 5.

ARTICLE

South Carolina Moves to Limit Punitive Damages: The Fairness in Civil Justice Act of 2011

by Joseph W. Rohe

On June 14, 2011, Governor Nikki Haley signed into law Act No. 52, R86, H3375, the "South Carolina Fairness in Civil Justice Act of 2011," Title 15, Chapter 32, Article 5 of South Carolina Code (hereinafter, the "Act"), thereby adding to South Carolina's limitations on non-economic damage awards. With this enactment, beginning January 1, 2012, South Carolina will join the ranks of states having enacted legislation to significantly limit punitive damage awards. This movement has come in response to what some consider "run-away" punitive damage verdicts, which may be highlighted by the Exxon Valdez case – *Exxon Shipping Co. v. Baker*, 553 U.S. 471 (2008) (originally $2.5 billion in punitives, later reduced by the U.S. Supreme Court to $507 million) – and the collection of cases making up what is referred to as the New Orleans Train/Tank Car Fire Litigation – *See In re: New Orleans Train Car Leakage Fire Litigation*, 794 So.2d 953 (La. App. 4th Cir. 2001) (upholding trial court reduction of $2.5 billion in punitive damages against CSX Railroads to $850 million in a case involving only relatively minor injuries). Even the United States Supreme Court has commented that punitive damage awards have "run wild" to the point of endangering the constitutional rights of litigants. *See Pacific Mut. Ins. Co. v. Haslip*, 499 U.S. 1 (1991).

The Act not only imposes limitations on awards of punitive damages in South Carolina, but additionally codifies certain pleading, trial and evidentiary requirements. Giving that punitive awards are quasi-criminal and retributive in nature, it is seemingly appropriate that the legislature establish caps much the same as they do with respect to criminal sentencing guidelines.

REQUIREMENTS FOR PLEADING AND PROVING PUNITIVES

"A claim for punitive damages must be specifically prayed for in the complaint." S.C CODE ANN. § 15-32-510(a). Additionally, "[t]he plaintiff shall not specifically plead an amount of punitive damages, only that punitive damages are sought in the action." § 15-32-510(b). Of note, this "general" pleading requirement is precisely as has been previously set forth pursuant to Rule 8, SCRCP, since 1986 ("A pleading…shall contain a prayer or demand for judgment for the relief [claimed]" and "claims for punitive or exemplary damages shall be in general terms only and not for a stated sum…"). Interestingly, the Note to the 1986 Amendment of Rule 8 indicates this language was added to avoid "an exaggerated interpretation of a claim for punitive damages and permits the pleader to keep the case proportional to the actual injury suffered." These sections do not alter current punitives pleading requirements, but merely codify what is dictated by the existing Rules of Civil Procedure.

The Act additionally clarifies that the burden of proof for an award of punitive damages is clear and convincing evidence of willful, wanton or reckless conduct. § 15-32-520(d) ("Punitive damages may be awarded only if the plaintiff proves by clear and convincing evidence that his harm was the result of the defendant's willful, wanton, or reckless conduct."); *see also* § 15-33-135 ("In any civil action where punitive damages are claimed, the plaintiff has the burden of proving such damages by clear and convincing evidence.") Again, while this portion of the Act does not alter the current requirements, it does set forth clear language for practitioners to incorporate into pleadings and argument.

BIFURCATED TRIALS AND EVIDENTIARY MATTERS

One of the more significant provisions of the Act is the required bifurcation of the compensatory and punitive damages portions of the trial upon the request of a defendant against whom punitive damages are sought. Most important to defendants facing potential punitive damage awards is that the power of bifurcation thus lies in their hands. "All actions tried before a jury involving punitive damages, *if requested by any defendant* against whom punitive damages are sought, *must* be conducted in a bifurcated manner before the same jury." § 15-32-520(a) [emphasis added]. "In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount

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of compensatory or nominal damages." § 15-32-520(b). Moreover, "[e]vidence relevant only to the issues of punitive damages is not admissible at [the compensatory liability] stage." Id. Therefore, defendants may prevent a plaintiff from admitting certain evidence that may be considered inflammatory or otherwise damaging at the liability stage of the trial.

As noted above, the burden of proving a claim for punitive damages is "clear and convincing" evidence. In the event a jury does award punitive damages, the trial court is then required to review the jury's decision, "considering all relevant evidence…to ensure that the award is not excessive or the result of passion or prejudice." § 15-32-520(f). Arguably this requirement for judicial oversight would apply regardless of whether or not the compensatory and punitive damage portions of the trial were bifurcated. The Act itself is not entirely clear in this regard, and whether the appellate courts would interpret the statute in this manner remains to be seen.

LIMITATIONS ON AWARDS

Following the lead of many states that have recently enacted caps on punitive damage awards, South Carolina now limits punitive damage awards in most cases to the greater of three times compensatory damages or the sum of five hundred thousand dollars. § 15-32-530(a). However and as indicated, this cap does not apply under all circumstances. Other states, such as Alabama (1999) and Florida (1999), have also enacted similar punitive damage caps. In fact, the Act closely resembles Florida's "tiered" limitation, codified at Fla. Stat. § 768.73. Where the jury returns a verdict for punitives in excess of the limitation set forth in § 15-32-530(a), the court will be required to make additional determinations concerning the limitation to be imposed. However, these determinations only become necessary when the jury in fact returns a punitive damage award in excess of the statutory cap. Key to this point, the Act requires that the limitations on punitives must not be disclosed to the jury. See § 15-32-530(b).

If the trial court determines that the wrongful conduct "was motivated primarily by unreasonable financial gain and determines that the unreasonably dangerous nature of the conduct, together with the high likelihood of injury resulting from the conduct, was known or approved by the [party]," or that the defendant's actions which were a proximate cause of plaintiff's injury could subject the defendant to a felony conviction, then punitive damages may not exceed the greater of four times compensatory damages or the sum of two million dollars. § 15-32-530(b).

More significantly, there is no cap on punitive damages where the court determines that: "(1) at the time of the injury the defendant had an intent to harm and determines that the defendant's conduct did in fact harm the claimant; or (2) the defendant has pled guilty to or been convicted of a felony arising out of the same act or course of conduct complained of by the plaintiff and that act or course of conduct is a proximate cause of the plaintiff's damages; or (3) the defendant has acted or failed to act while under the influence of alcohol, drugs, other than lawfully prescribed drugs administered in accordance with a prescription, or any intentionally consumed glue, aerosol, or other toxic vapor to the degree that the defendant's judgment is substantially impaired." § 15-32-530(c).

Additionally and worth noting, the Act specifically indicates it shall have no effect on limitations imposed pursuant to the South Carolina Tort Claims Act (Chapter 78, Title 15) or the South Carolina Solicitation of Charitable Funds Act (Chapter 56, Title 33). See § 15-32-540.

CONCLUSION

The enactment of the South Carolina Fairness in Civil Justice Act of 2011 may be considered a substantial change in the way cases involving punitive damage awards are tried in South Carolina. Arguably the two most significant provisions of the Act are the limitation on awards and the bifurcation of the compensatory and punitive damage portions of the trial. Given that most South Carolina juries are typically not prone to large punitive damage awards (though there are of course exceptions), the bifurcation provisions of the Act will likely prove the most practically significant. While most courts are reluctant to bifurcate a trial with respect to compensatory and punitive damages, typically on the grounds of concern for judicial economy, the Act now removes the court's discretion on that issue. As such, the Act appears to impart a considerable benefit to defendants facing punitive damage claims in South Carolina courts, as well as a victory to many tort reform advocates.

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ARTICLE

What Violates Public Policy? A Question of Law Decided Case-By-Case.

by Brian L. Quisenberry and Eric C. Schweitzer

In a recent case addressing the public-policy exception to at-will employment, the South Carolina Supreme Court rejected a bright-line rule to determine what violates public-policy, and held the question is an issue of law for the Court.

Introduction:

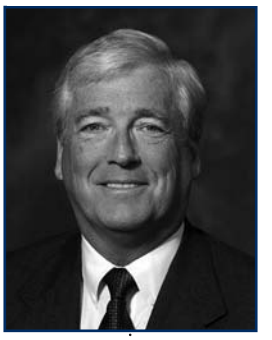
South Carolina has long embraced the common law rule of "at-will" employment. Under this rule, an employment relationship for an indefinite period "is generally terminable by either party at any time, for any reason or for no reason at all."[1] The South Carolina Supreme Court, however, recognizes exceptions to at-will employment, including when an employee's discharge constitutes "a violation of a clear mandate of public policy."[2] In *Ludwick v. This Minute of Carolina, Inc.*, the Court recognized for the first time a cause of action in tort against employers for discharges that violate public policy.

Since the Supreme Court first announced the public-policy exception to at-will employment, employers and courts have struggled to determine what sorts of actions will be found to violate public policy. One court recently opined "the condition of this cause of action under South Carolina state court precedent is less that desirable. It is not the Court's first jaunt through it and there simply remains too much ambiguity. The language employed is typically inconsistent, and the courts have simultaneously circumscribed the cause of action while in the same breadth teased that more is available."[3]

The Court's rulings after *Ludwick* identify various terminations that violate public-policy. The Court, however, generally rejects a bright line rule to define the limit of the cause of action, resulting in uncertainty for employers attempting to make lawful termination decisions. Courts determining public-policy issues in the employment arena on a case-by-case basis have provided little guidance to employers hoping to avoid liability. In response, employers have enthusiastically argued for a bright line test after the Supreme Court hinted in *Lawson v. Department of Corrections* that the cause of action was limited to only two narrow circumstances.[4] In last year's term, however, the Court rejected a bright line rule and confirmed that the question of what violates public policy is, and will remain, a question of law for the Court to decide.[5]

This article analyzes the history of the public-policy exception and the prior case-law authority at issue in the Supreme Court's recent *Barron v. Labor Finders* holding, and discusses how the opinion will affect employment litigation going forward.

Brian L. Quisenberry



Eric C. Schweitzer

An Early Limitation: Alternative Statutory Remedies Bar the Claim

Shortly after announcing the public-policy exception in *Ludwick*, the South Carolina Supreme Court limited the scope of the exception. In *Epps v. Clarendon County*, the Court held the public-policy exception does not extend to situations where an employee has an existing statutory remedy for the alleged wrongful termination.[6] The plaintiff in Epps brought suit claiming wrongful discharge against Clarendon County under the *Ludwick* exception to at-will employment.[7] The plaintiff claimed that his discharge violated public policy because it infringed on his constitutional rights to free speech and association.

The South Carolina Supreme Court rejected the public-policy claim because the plaintiff had a statutory remedy in the form of a first amendment suit under 42 U.S.C. § 1983.[8] The *Epps* Court held "[w]e decline to extend the *Ludwick* exception to a situation where, as here, the employee has an existing remedy for a discharge which allegedly violates rights other than the right to the employment itself."[9] Thus, early on in the development of the public-policy exception the Court signaled that the claim would be available in only limited circumstances.

Continued on next page

ARTICLE CONT.

Public Policy as a Jury Issue?

Whether determining what violates public policy is a question of law for the court or a question of fact for the jury was unclear immediately after *Ludwick*. In *Evans v. Taylor Made Sandwiches*, the Court of Appeals held that the jury, not the court, decides what violates public policy. The *Evans* court upheld a jury verdict against an employer for wrongfully discharging a number of employees who complained to the Department of Labor that the employer failed to pay them wages in violation of the South Carolina Payment of Wages Act.[10] The *Evans* court rejected the employer's contention that the claims failed because the employees had an existing statutory remedy under the Act holding "[w]hile the law of this State provides a remedy for the recovery of wages which remain unpaid after termination, it does not provide a remedy for the wrongful termination itself." [11] Significantly, the *Evans* court held that the determination of what constitutes a violation of public policy is a factual issue for the jury rather than an issue of law.[12] The *Evans* holding, therefore, appeared to broadly expand the scope of terminations that could constitute public-policy violations, limiting the number of cases in which employers could win at the summary judgment stage.

A Bright Line Rule?

The year after the Court of Appeals decision in *Evans*, the South Carolina Supreme Court signaled that the public-policy exception was much narrower than previously thought.[13] In *Lawson v. Department of Corrections*, the plaintiff sued the Department of Corrections alleging his termination for reporting alleged misconduct violated public policy.[14] The *Lawson* court did not address the Court of Appeals holing in *Evans* and did not directly answer the issue of whether the Jury should decide public-policy violations. It did, however, affirm summary judgment in favor of the employer, and in doing so strongly implied that the public-policy exception was limited to only two situations.

The Court held "[t]his public policy exception clearly applies in cases when an employer requires an employee to violate the law or the reason for the employee's termination was itself a violation of criminal law. This is not the case here. **Appellant was not asked to violate the law and his termination did not violate criminal law. *Thus*, these allegations do not support a wrongful discharge action.**" [15] The Court went on to hold: "***Further***, when a statute creates a substantive right (i.e. the Whistleblower statute) and provides a remedy for infringement of that right, the plaintiff is limited to that statutory remedy."[16] The Court's holding strongly implied that the plaintiff's claim in *Lawson* failed not only because the plaintiff had an alternative statutory remedy but also because the termination fell outside the two narrow situations cited by the Court. Employers therefore interpreted *Lawson* as establishing a bright line rule for violations of public policy.

Many South Carolina District Courts thereafter held that South Carolina law limits the public-policy exception to only these two instances - when an employer requires an employee to violate the law or the reason for the employee's termination was itself a violation of criminal law.[17] District Courts repeatedly dismissed public-policy claims that fell outside these narrow limits. Uncertainty remained, however, because the Supreme Court had yet to expressly overrule Evans and other prior holdings that seemingly conflicted with the Court's narrow limitations in *Lawson*.

Barron v. Labor Finders of South Carolina

The South Carolina Supreme Court's recent opinion in *Barron v. Labor Finders of SC* rejected the widely applied interpretation of the Court's holding in *Lawson*. In *Barron*, the plaintiff alleged her former employer violated public policy when it terminated her employment in retaliation for her complaints to management regarding unpaid commissions. The Circuit Court granted the defendant's Motion for Summary Judgment and the plaintiff appealed.

The Court of Appeals affirmed summary judgment for the employer despite the apparent factual similarity to the *Evans* case, which also addressed retaliation for complaining about unpaid wages. The court quoted the Supreme Court's ruling in *Lawson*, and held that South Carolina law limits the public-policy exception to two situations: where the employee was asked to violate the law or the termination violated criminal law. [18] "[I]n *Lawson*, the Supreme Court . . . held that where the '[a]ppellant was not asked to violate the law and his termination did not violate criminal law...[the] allegations [did] not support a wrongful discharge action,' suggesting that the exception has now been so limited."[19] The Court of Appeals held "because Appellant was not asked to violate the law and her termination itself was not a violation of criminal law, summary judgment was proper."[20]

The Supreme Court affirmed the result in favor of the defendant, but rejected the Court of Appeals' reliance on the *Lawson* holding.[21] The Supreme Court held that the Court of Appeals misinterpreted *Lawson*. "Relying largely on *Lawson* . . the Court of Appeals held the public policy exception did not apply as petitioner was not asked to violate the law and the reason for her termination itself was not a violation of criminal law. . . . We find the Court of Appeals misread as limiting the public policy exception to these two situations."[22] The Supreme Court added "While the public policy exception applies to situations where an employer requires an employee to violate the law or the reason for the termination

itself is a violation of criminal law, ***the public policy exception is not limited to these situations***." [23]

The *Barron* Court reaffirmed that public-policy claims are not available if the Plaintiff has a statutory remedy for the alleged wrongful termination.[24] The Court also noted that the Payment of Wages Act contains no provision for wrongful termination, and therefore the statutory remedy bar would not preclude Barron's claim.[25] The Court, however, agreed with the Court of Appeals that the facts in *Barron* were distinguishable from those in *Evans*.[26] The Court emphasized that the plaintiffs in *Evans* complained to the Department of Labor under the Payment of Wages Act procedures while the Barron plaintiff only logged internal complaints to her managers.[27] Therefore, the Barron Court held the plaintiff's claim failed because her complaints never implicated the public policy contained in the Payment of Wages Act.[28]

The *Barron* holding, however, does provide some guidance regarding the public-policy exception. The *Barron* Court expressly reversed the Court of Appeals' holding in *Evans* that allowed juries to decide public-policy issues:

> We overrule to the extent it holds that a jury may determine whether discharging an employee on certain grounds is a violation of public policy. In this state, an at-will employee has a cause of action for wrongful termination where there is a retaliatory termination of the at-will employee in violation of a clear mandate of public policy. The determination of what constitutes public policy is a question of law for the courts to decide. . . . It is not a function of the jury to determine questions of law such as what constitutes public policy. Rather, once a public policy is established, the jury would determine the factual question whether the employee's termination was in violation of that public policy. [29]

What does Barron mean for Employers?

Under *Barron*, courts now must decide, on a case-by-case basis whether the employer's alleged basis for termination violates public policy. Under this rule, employers should have more opportunities for ending claims at the summary judgment stage given courts cannot "punt" the public policy decision to the Jury. In fact, in the subsequent case of *Tomkins v. Eckerd*, the District Court applied *Barron* to hold as a matter of law that the plaintiff's alleged termination did not violate public policy.[30]

Some courts, however, may apply an expansive view of public policy to avoid granting summary judgment.[31] Specifically, the *Barron* court strongly rejected the argument that its prior precedent limited the public-policy exception to only certain narrow circumstances. Thus, plaintiffs can use this portion of the Court's holding to support a broad interpretation of the terminations that violate public policy. Indeed, in the recent case of *Scarborough v. Lifepoint*, the Court cited the *Barron* decision as a basis for taking an expansive view of public policy.[32] In denying the defendant's Motion to Dismiss, the *Scarborough* court noted "the Supreme Court stated [in *Barron*] that the public-policy exception would extend even beyond claims that the employer required employees to violate either the criminal or civil laws."[33]

After *Barron* employers continue to face the uncertainty associated with an undefined exception to at-will employment. Without a bright line rule, employers must rely on the case-by-case determinations made in prior litigation to evaluate their exposure to potential liability when making termination decisions.

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Footnotes

1 *Presscott v. Farmers Tel. Coop., Inc.*, 335 SC 330, 516 S.E.2d 923 (1999).

2 *Ludwick v. This Minute of Carolina, Inc.*, 287 S.C. 219, 337 S.E.2d 213 (1985).

3 *Scarbourough v. Lifepoint, Inc.*, 2011 WL 9819082, * 7 (D.S.C. 2011).

4 *Lawson v. Department of Corrections*, 340 S.C. 346, 532 S.E. 2d 259 (2000).

5 *Barron v. Labor Finders of SC,* 393 S.C. 609, 713 S.E.2d 634 (2011).

6 *Epps v. Clarendon County*, 304 S.C. 424, 405 S.E.2d 386 (1991).

7 *Id*..

8 *Id*. at 426 ("Here, appellant claims an infringement of his constitutional rights to free speech and association. Title 42 U.S.C. § 1983 allows a civil action for damages against a government official who deprives an individual of a constitutional protected right. A public employee, even one employed at will, may state a claim under § 1983 for violation of his First Amendment rights by alleging damages from hiring decisions that are based solely upon political belief or association and are unjustified by a vital government interest").

9 *Id. See also, Stiles v. American General Live Insurance Co*., 335 S.C. 222, 516 S.E.2d 449 (1999) (Toal, A.J. concurring) (citing *Epps* and holding "the *Ludwick* exception is not designed to overlap an employee's statutory or contractual rights to challenge a discharge, but rather to provide a remedy for a clear violation of public policy where no other reasonable means of redress

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exists"); *Dockins v. Ingles Markets, Inc.,* 306 S.C. 496, 413 S.E.2d 18 (1992) (holding that the plaintiff's public policy claim failed because the plaintiff was limited to pursing his federal statutory remedy provided under the Fair Labor Standards Act).

10 *Evans v. Taylor Made Sandwiches*, 337 S.C. 95, 522 S.E.2d 350 (Ct. App. 1999).

11 *Id*. at 102.

12 *Id* at 103.

13 *Lawson v. Department of Corrections*, 340 S.C. 346, 532 S.E. 2d 259 (2000)

14 *Id*. at 349.

15 *Id*. at 350 (emphasis added).

16 *Id*. (emphasis added).

17 *See, e.g., Bolin v. Ross Stores, Inc.*, 2009 U.S. Dist. LEXIS 10359, at *9-10 (D. S.C. 2009, PERRY, JR) (noting that the South Carolina Supreme Court has recognized public policy claims only in cases where an employer forced an employee to violate the law or the termination itself was a violation of criminal law). In fact, many courts limited the public policy exception to only violations of criminal law. *See, Eady v. Veolia Trans., Serv. Inc*., 609 F. Supp. 2d 540, 559 (D.S.C. 2009, HOUCK) ("because the plaintiff has not alleged that he was required to violate a criminal law or that his termination was in violation of a criminal law, his claim does not fall within the public policy exception"); *Greene v. Quest Diagnostics Clinical Laboratories, Inc.*, 455 F.Supp.2d 483, 489 (D. S.C. 2006, NORTON) ("Because plaintiff has not alleged that she was required to violate a criminal law or that her termination itself was in violation of a criminal law, her claim does not fit within the currently recognized bounds of the public policy claim").

18 *Barron v. Labor Finders of SC*, 384 S.C. 21, 682 S.E.2d 271 (Ct. App. 2009).

19 *Id*. at 26, citing, Lawson v. S.C. Dep't of Corr., 340 S.C. 346, 350 (2000).

20 *Id*. at 26.

21 *Barron v. Labor Finders of SC*, 393 S.C. 609, 713 S.E.2d 634 (2011).

22 *Id*. at 616.

23 *Id*. at 614 (emphasis added).

24 *Id*. at 617.

25 *Id*.

26 *Id*.

27 *Id*.

28 *Id*.

29 *Id*. at 616-17, citing, *Citizens' Bank v. Heyward*, 135 S.C. 190, 133 S.E. 709, 713 (1925) ("The primary source of the declaration of public policy of the state is the General Assembly; the courts assume this prerogative only in the absence of legislative declaration.").

30 *Tomkins v. Eckerd*, 2011 WL 4549173, *7 (D.S.C 2011)(CHILDS).

31 Courts applying an expansive view of public policy risk reversal given the limited nature of the exception under South Carolina Supreme Court precedent.

32 *Scarbourough v. Lifepoint, Inc*., 2011 WL 6182111, *2 (D.S.C. 2011)(GERGEL).

33 *Id*.

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(December 6, 2011).

10 Id.

11 June 6, 2011 letter from Robert D. Cook, Deputy Attorney General, to the Honorable P.J. Tanner, Sheriff, Beaufort County.

12 Id.

13 Greenville County Sheriff's Department v. Play 4 Fun, Inc., C/A No. 2011-CP-23-2657 (Jan. 27, 2012), at pp. 1, 2.

14 24 *Id.*

15 25 *Id*. at p. 2.

16 26 *Id*. at p. 5.

17 27 *Id*.

18 28 S.C. Code Ann. § 61-4-580(3)(emphasis added).

19 *Greenville County Sheriff's Department v. Play 4 Fun, Inc.*, C/A No. 2011-CP-23-2657 (Jan. 27, 2012), at p. 6 (citing *Joiner ex rel. Rivas v. Rivas*, 536 S.E.2d 372, 375 (S.C. 2000)).

20 *Id*.

21 *Id*. at pp. 7-8 (citing *Denman v.City of Columbia*, 691 S.E.2d 465, 468-69 (S.C. 2010)).

22 *Id*. at p. 8 (citing *Denman*, 691 S.E.2d at 469 (S.C. 2010).

23 *Id*. at pp. 8-9.

24 *Id*. at p. 9.

25 *Id*. (citing *Sun Light*, 600 S.E.2d at 65).

26 *Id*. (citing *Sun Light*, 600 S.E.2d at 65-66 (Pleicones, J., and Pieper, J., dissenting)).

27 *Id*. at p. 9.

28 *Id*. (citing *Ward*, 692 S.E.2d at 521 (emphasis added)).

29 *Id*. at p. 9.

30 *Id*. at pp. 11-12.

31 Schuyler Kropf, "State May Tackle Internet Gaming," The Post and Courier (Charleston, S.C.), January 28, 2012, accessed at http://www.postandcourier.com/news/2012/jan/28/state-may-tackle-internet-gaming/.

32 *Id*.

33 John Monk, "Gaming or Gambling? Hundreds of Machines Target for Seizures," The State (S.C.), February 1, 2012, accessed http://www.thestate.com/2012/02/01/2135571/gaming-or-gambling.html.

34 *See, e.g., Hest Technologies, Inc. and International Internet Technologies, LLC v. State of North Carolina et al.*, File No. 08 CVS 457 (December 19, 2008) (preliminary injunction finding that internet sweepstakes system did not violate North Carolina gaming laws as amended by North Carolina Session Law 2008-122 (July 28, 2008)).

35 *See Hest Technologies, Inc. and International Internet Technologies, LLC v. State of North Carolina et al.*, File No. 08 CVS 457 (November 22, 2010) (holding that N.C.G.S. § 14-306.4(a)(3), as amended by North Carolina Session Law 2010-103 (July 20, 2010), is overbroad and constitutes a prior restraint on free expression in violation of the First Amendment of the U.S. Constitution).

36 Mac Ingraham, "Internet Sweepstakes Games Continue Despite NC Law that Bans Them," digtriad.com, WFMY News 2 (Greensboro, N.C.), September 21, 2011, accessed at http://www.digtriad.com/news/local/article/192207/57/Sweepstakes-Outlets-Keep-Opening-While-Ban-Under-Appeal.

Case Notes

Summaries prepared by Breon Walker

Bass v. Gopal, Inc. and Super 8 Motels, Inc., 395 S.C. 129, 716 S.E.2d 910 (2011)

This is a premises liability case arising out of a criminal act at a motel. Bass was a guest at the Super 8 Motel in Orangeburg from June 1999 through the end of September 1999. On September 28, 1999, Bass and his roommate were turning in for the night around 10:00 p.m. when they heard a knock on the door. The motel is an exterior corridor-style motel. The gentlemen got up, looked out of the peephole and also out of the large plate glass window beside the door, but did not see anyone. This occurred two more times until the men finally opened the door. At that point, a gentleman they had observed earlier at a convenience store attempted to rob Bass, then shot him in the leg and fled on foot.

Bass filed a complaint for negligence against Defendants. Defendants both moved for summary judgment, which were granted. The Court of Appeals affirmed the lower court and this appeal followed.

The issue was whether the Court of Appeals erred in upholding the lower court's finding that the respondent did not have a duty to protect Bass from the criminal acts of a third party.

An innkeeper is under a duty to its guests to take reasonable action to protect them against unreasonable risk of physical harm. The innkeeper had a duty to protect Bass on some level, the question is, whether the innkeeper knew or had reason to know of a probability of harm to its guests.

In its analysis, the Supreme Court looked at four tests:

1. **Imminent Harm Rule** – The Court viewed this rule as outdated in that it imposes too minimal a duty on business owners to protect patrons.

2. **Prior or Similar Incidents Test** – The Court found several problems with this test: First, foreseeability may only be established by evidence of previous crimes on or near the premises; however, under this test, the first victim always loses which is contrary to public policy. Second, use of the word "similar" leads to arbitrary results and distinctions. Third, the mere fact that a particular kind of an accident has not happened before does not show that such accident is one which might not reasonably have been anticipated.

3. **Totality of Circumstances** – The Court viewed this test as the broadest approach. It considers all relevant factual circumstances to determine whether a criminal act was foreseeable. This has been criticized as making businesses the insurers of customer safety, which the Court tries to avoid.

4. **The Balancing Test** – This test recognizes that duty is a flexible concept and seeks to balance the degree of foreseeability of harm against the burden of the duty imposed.

The Court adopted the balancing test because it appropriately weighs both the economic concerns of businesses, and the safety concerns of their patrons. By replacing the imminent harm test with the balancing test, the Court stated that it hopes to encourage a reasonable response to the crime phenomenon without making unreasonable demands.

The Court went on to state that whether security is reasonable will, many times, be identified by an expert. In the present case, Bass' expert concluded that there was adequate lighting and the physical hardware on the door was within industry standards. Bass failed to provide any evidence that respondent should have expended more resources to curtail the risk of criminal activity that might have been probable.

Holding: The Supreme Court adopted the balancing approach in place of the imminent harm test and found that Bass did not provide any evidence that respondent's security measures were unreasonable given the risk of criminal activity on the property. As such, the Circuit Court's granting of Defendants' summary judgment was affirmed.

Karen Cole, as Guardian ad litem for David C. v. Boy Scouts of America, Indian Waters Council, Pack 48, Faith Presbyterian Church and Jeff Wagner; David Cole and Karen Cole v. Boy Scouts of America, Indian Waters Council, Pack 48, Faith Presbyterian Church and Jeff Wagner, 2011 WL 6029885 (S.C. Dec. 5, 2011)

This case involves personal injury as a result of a contact sport. In March 2004, David Cole and his son, David, Jr., were attending a Cub Scout family camping trip. Jeff Wagner and his son were also attending the camping trip. The Coles and Wagners were on opposite teams during a father-son, pick-up softball game. David Cole was playing catcher. Jeff Wagner was rounding third and approaching home when David Cole moved on top of the plate with his body directly in the baseline. Unfortunately, Wagner

Continued on next page

was running too fast and unable to stop in time to avoid Cole. The two collided violently with Wagner breaking a rib and Cole suffering a closed head injury. Cole had to be airlifted to Palmetto Richland and spent two days in the ICU. David Jr. witnessed the entire incident in fear that his father was going to die.

The Coles initiated this action for personal injury, loss of consortium, and negligent infliction of emotional distress. Wagner moved for summary judgment contending he owed no duty to Cole because Cole assumed the risks inherent to the sport of softball. The Circuit Court granted Wagner's motion and this appeal followed.

The Coles argued that the circuit court erred in finding Cole assumed the risk of his injury because Wagner's conduct was outside the scope of the game. They further argued that softball was intended to be noncompetitive and that Wagner acted recklessly.

The Supreme Court noted that a risk inherent in a sport can be found at any level of play, possibly more so in a non-professional setting where the players engage with less skill and athleticism than professional sports. Where a person chooses to participate in a contact sport—regardless of the level of play—he assumes the risks inherent in that sport. The Coles contend that Wagner violated a rule of softball by "running over the catcher"; however, the risk of someone violating a rule of the game is one of the risks taken when engaging in a sport.

The Coles argued that, even if mere negligence may be outside the duty of care, Wagner's conduct was reckless and, therefore, outside the scope of risks assumed in softball. "Recklessness or willfulness may be inferred from conduct so grossly negligent that a person of ordinary reason and prudence would then have been conscious of the probability of resulting injury." *Yuan v. Baldridge*, 243 S.C. 414, 419, 134 S.E.2d 248, 251 (1964). In response, the Supreme Court noted that even assuming Wagner's conduct could be characterized as reckless, it was not so reckless as to involve risks outside the scope of softball. Almost all contact sports involve conduct that a reasonably prudent person would recognize may result in injury.

Holding: Some recklessness by co-participants in a contact sport must be assumed as part of the game. Accordingly, a player assumes the risk of ordinary recklessness committed within the course of the game. The Court emphasized that the holding is limited to recklessness committed within the scope of the game and does not include intentional conduct by a co-participant of a sport, or conduct so reckless as to be outside the scope of the game

Elizabeth Fettler v. Frederick Gentner, 2012 WL 243326 (Ct. App. Jan. 25, 2012)

This case involves an action for negligence arising out of a motor vehicle accident. On December 25, 2002, Fettler was a passenger in a vehicle being driven by her husband. The Fettlers stopped at a yield sign while attempting to enter the interstate by way of an on-ramp. Gentner rear-ended the Fettlers as they were yielding for another vehicle entering the on-ramp from the opposite direction. At trial, Gentner testified that he stopped looking in the direction he was traveling and focused his attention on the vehicle that was entering from the opposite direction. Despite his actions, Gentner conceded at trial that he is required to look where he is going while operating a motor vehicle.

At the close of evidence, Fettler moved for a directed verdict on the issue of Gentner's negligence. The trial court noted that Gentner admitted to failing to keep a proper lookout, yet still denied the directed verdict on the issue of negligence. At the conclusion of trial, the jury returned a verdict for Gentner. Fettler made a motion for judgment not withstanding the verdict ("JNOV") which the Court treated as a thirteenth juror motion and ruled there was evidence in the record to support the jury's decision. This appeal followed.

The Court of Appeals held the trial judge erred in denying both the directed verdict and JNOV motions because the evidence was not susceptible to more than one reasonable inference on the issue of Gentner's negligence. Both Gentner and Gentner's wife admitted their failure to keep a proper lookout during trial testimony. Even with the admissions, Gentner argued that there was evidence in the record supporting the inference that Fettler's negligence caused or contributed to the motor vehicle accident, however, the only evidence was Gentner's personal opinion that Fettler did not need to stop because the oncoming car was not close enough to disturb the Fettlers' travel. The Court of Appeals differentiated between an actual issue of fact and the personal opinion from someone who did not have his eyes focused on his lane of travel.

Holding: The Court of Appeals reversed and remanded the trial court's denial of the Fettlers' directed verdict and JNOV motions for a new trial. The Court of Appeals also held that the trial court's jury charge of negligence was prejudicial and erroneous as it should have been resolved by directed verdict in favor of Fettler and that there was no evidence in the record to support a charge of negligence to the jury. Therefore, it had the strong possibility of confusing the jury and affecting the outcome of the trial.

Carol M. Kimmer, Personal Representative of the Estate of Richard Kimmer, deceased, Respondent v. Philip E. Wright, Appellant, 393 S.C. 53, 719 S.E. 2d 265 (Ct. App. 2011).

Richard Kimmer was injured on January 29, 1999, in a car accident while driving to work for employer, Murata. He hired attorney Philip Wright to represent him. Wright settled Kimmer's claims with the at-fault driver's insurance carrier for his policy limit of $15,000.00 without putting Murata on notice.

A couple of years later, Kimmer attempted to get workers' compensation benefits from Murata, which were denied. Murata asserted as a defense Kimmer's settlement with the third party driver without Murata's consent.

Wright informed Kimmer about his mistake in settling the third party claim without notice to Murata and advised Kimmer to seek other counsel due to the potential legal malpractice claim against Wright. Kimmer terminated Wright's representation of him on February 24, 2000.

On July 31, 2003, the single commissioner found Kimmer's injuries compensable but ruled that the workers' compensation claim was barred because settlement with the third party constituted an election of remedies. The Appellate Panel affirmed. The Circuit Court reversed the Order of the Appellate Panel noting that Murata suffered no prejudice as a result of the settlement without notice and that Kimmer was totally and permanently disabled. As such, the Circuit Court ruled that Kimmer was entitled to an award of total and permanent disability, less an offset for the third party settlement. The Court of Appeals reversed the Circuit Court and reinstated the Order of the Appellate Panel.

While the appeal of the workers' compensation case was pending, Wright and Kimmer entered into a tolling agreement on October 30, 2003. Kimmer filed this legal malpractice action on October 14, 2004 and Wright filed an amended answer on May 13, 2005. In his Amended Answer, Wright asserted that Kimmer's legal malpractice action was barred by the statute of limitations. On June 20, 2005, the Honorable S. Jackson Kimball denied Wright's Motion for Summary Judgment on the statute of limitations ruling that the adverse ruling of the Workers' Compensation Commission would be the "trigger" event that triggered the statute of limitations. Judge Kimball held that there was an issue of fact between when Kimmer was put on notice that he actually had a legal malpractice claim as opposed to when he was told he "might" have a claim against Wright. Judge Kimball granted a stay of the legal malpractice action until the appeal of the workers' compensation case was completed.

After the Supreme Court denied certiorari of the workers' compensation case, both parties moved for summary judgment in the legal malpractice action in front of Judge John C. Hayes. Judge Hayes ruled he was bound by Judge Kimball's determination regarding the statute of limitations and this appeal followed.

Wright argued the trial court erred in holding as a matter of law the statute of limitations had not run on Kimmer's malpractice claim and the Court of Appeals agreed. Kimmer argued that the statute of limitations in a legal malpractice case does not commence until an adverse judgment in the underlying action. Citing a previous holding, the Court of Appeals stated that "once a reasonable person has reason to believe that some right of his has been invaded or that some claim against another party might exist, the requirement of reasonable diligence to investigate this information further takes precedence over the inability to ascertain the amount of damages or even the possibility that damages may be forthcoming at all." Binkley v. Blurry, 352 S.C. 286, 297-98, 573 S.E.2d 838, 844-45 (Ct. App. 2002). The Court of Appeals referred to Wright's letter dated February 1, 2000, in which he explained to Kimmer that he failed to notify his employer which may have prejudiced his right to receive workers' compensation benefits. Additionally, Kimmer signed a Waiver of Conflict on February 1, 2000, which provided: "I understand that I may have a right to make a claim against Mr. Wright concerning his representation related to my workers' compensation action." Kimmer also further admitted during his deposition that prior to February 1, 2000, Wright told him he had "screwed this up." The Court of Appeals viewed the aforementioned facts as evidence that Kimmer understood as of February 1, 2000, that he was not receiving workers' compensation benefits because of Wright's mistake.

Holding: Kimmer knew that Wright made a significant error and that he was suffering financial and emotional damages due to the error, more than three years prior to the parties' tolling agreement. Accordingly, the trial court erred in holding the statute of limitations did not begin to run until the single commissioner issued her order.

Verdict Reports

Type of Action: Automobile Accident

Injuries alleged: soft tissue pain in right knee, lower back, right hip, head and chest
Name of Case: Phillistine Nelson v. Jeffrey M. Brunson
Court: Sumter County Common Pleas
Case #: 10-CP-430-1224
Tried before: Jury
Name of judge: The Honorable George C. James, Jr.
Amount: $9,000.00 for Plaintiff
Date of verdict: February 2, 2012
Demand: Pre Trial Demand $24,000.00
Highest offer: $7,700
Attorney(s) for defendant (and city):
Kelley Shull Cannon and Caroline H. Raines of Howser, Newman & Besley, LLC, in Columbia
Description of the case, the evidence presented, the arguments made and/or other useful information: The Plaintiff's specials totaled $7,480.00 and consisted primarily of check up visits, prescriptions for pain medication, and negative diagnostic tests. The case was tried in the absence of the Defendant. The Plaintiff was the only witness.

Type of Action: Automobile Accident

Injuries alleged: soft tissue pain in neck and back
Name of Case: Christopher Hartley v. Raymond Shuford and Selma Fay Martin
Court: Saluda County Common Pleas
Case #: 09-CP-41-00131
Tried before: Jury
Name of judge: The Honorable R. Knox McMahon
Amount: $4,193.15 for Plaintiff, finding Defendant Martin 100% at fault
Date of verdict: October 13, 2011
Demand: Pre Trial Demand: greater than $10,000.00
Highest offer: $10,000.00 from both Defendants
Attorney(s) for defendant (and city): Michal C. Jones and Caroline H. Raines of Howser, Newman & Besley, LLC, in Columbia for Defendant Martin
Description of the case, the evidence presented, the arguments made and/or other useful information: The jury found that Defendant Martin ran the red light and was therefore at fault in causing the accident. The jury awarded the Plaintiff the exact amount of his alleged special medical damages. The Plaintiff's motion for additur was denied and the case is currently being appealed by the Plaintiff.

Type of Action: Medical Malpractice

Injuries alleged: Brain damage to baby during labor and delivery

Name of Case: Serena Thigpen, Individually and as Personal Representative for the Estate of Trevor S. Beltz (deceased) v. Nancy B. Stroud, M.D. both individually and as an agent/employee of Richard P. Day and Nancy B. Stroud, LLC d/b/a Day Stroud Senokozlieff Ball, Richard P. Day and Nancy B. Stroud, LLC d/b/a Day Stroud Senokozlieff Ball, and Trident Medical Center, LLC
Court: Circuit Court-Charleston County
Case number: 07-CP-10-3617 and 07-CP-10-3632
Name of Judge: The Honorable Roger M. Young
Amount: Defense Verdict
Date of Verdict: November 15, 2011
Attorneys for defendant (and city):
Molly H. Craig, Chilton Grace Simmons, Elizabeth W. Ballentine, Charleston, South Carolina

Description of the case: The Plaintiff filed a medical malpractice action against an obstetrician and her practice in connection with the delivery of a baby who suffered from severe brain damage in 2004. The Plaintiff alleged the doctor was negligent by not expediting delivery of the baby by a caesarean section, thereby causing severe injury to the minor child's brain, resulting in hypoxic ischemic encephalopathy and severe permanent harm. The defense presented testimony that the baby was tolerating labor in utero as evidenced by the fetal monitor strip which was reassuring until just prior to delivery. Once the fetal monitor became non-reassuring, the baby was delivered within minutes. The Plaintiff alleged there were multiple signs of fetal distress throughout labor and the failure to intervene with a timely caesarean section resulted in a hypoxic injury to the baby's brain. Further, the defense presented expert testimony that the cause of the child's brain damage was caused by an infection in the placenta known as chorioamnionitis at least five days before labor and delivery. Prior to trial, the hospital settled the case. The case was tried for seven days and the jury returned a defense verdict in favor of the obstetrician and her practice. The hospital settled with the Plaintiff prior to trial.

Type of Action: Automobile Accident

Injuries alleged:
Basically Neck and Back Sprain/Strain.
Name of Case: Graham & Davis v. Ashford
Court: Fairfield County Common Pleas
Case #: 10-CP-38-00138
Tried before: Jury
Name of judge: The Honorable Ernest Kinard
Amount: For Defense
Date of verdict: November 29, 2011
Demand: Pre Trial Demand
$11,000 for Adult Passenger Plaintiff
$10,000 for Minor Passenger 1
$12,000 for Minor Passenger 2
Highest offer: $1,000 per Plaintiff

Attorney(s) for defendant (and city):
Kelley Shull Cannon of Howser, Newman & Besley, LLC, in Columbia

Description of the case, the evidence presented, the arguments made and/or other useful information:
Defendant Driver ran off of road after spotting deer on the road. Plaintiffs tried to argue that the deer were too far away to create sudden emergency and that Defendant Driver negligently lost control of the vehicle.

Type of Action: Automobile Accident

Injuries alleged: Neck, Back and Knee Sprain/Strain.
Name of Case: King v. Scott
Court: Jasper County Common Pleas
Case #: 10-CP-27-792
Tried before: Jury
Name of judge: The Honorable Roger Young
Amount: For Plaintiff in the amount of $10,000
Date of verdict: January 30, 2012
Demand: Pre Trial Demand $21,500
Highest offer: $ 5,850

Attorney(s) for defendant (and city):
Michal Cooper Jones of Howser, Newman & Besley, LLC, in Columbia

Description of the case, the evidence presented, the arguments made and/or other useful information:
Defendant Driver backed out of a secondary road into the car in which Plaintiff was traveling as a passenger. Defense admitted liability, and tried the case to the jury on damages only based on her limited scope of treatment for three weeks following the accident. The Plaintiff asked the jury to return a verdict of $40,000 on approximately $3350 in medical specials.

Type of Action: Medical Malpractice

Injuries alleged: wrongful death and survival action

Name of Case:
Thomasena Sanders, as Personal Representative of the Estate of Millicent P. Wallace v. Trident Medical Center, LLC, Trident Medical Arts MRI, Mark Greenslit, M.D., Charleston Radiologists, P.A.

Court: Circuit Court-Charleston County

Case number: 2008-CP-10-6883

Name of Judge: The Honorable Roger M. Young, Sr.

Amount: Defense Verdict

Date of Verdict: December 15, 2011

Attorneys for defendant (and city):
Molly H. Craig, Robert H. Hood, Jr., Brian E. Johnson, Charleston, South Carolina

Description of the case:
The Estate brought suit for the death of a 51 year old mother of two who died after receiving gadolinium for an MRI with contrast dye. The decedent presented to a diagnostic radiology suite for an MRI with contrast for ongoing back pain. Shortly after receiving the contrast dye, the decedent had a reaction, resulting in a seizure. Following the seizure, the Defendant radiologist assessed and monitored the decedent while she was in a postictal state and arranged for transfer of the patient to the Emergency Department for further evaluation. During the transport to the hospital, the patient expired.
The Plaintiff's expert alleged the doctor failed to timely respond to the patient having a contrast reaction to the dye and failed to treat the patient for anaphylactic shock by not giving any medicine, both of which resulted in her death. The autopsy report listed the cause of death as anaphylaxis. The defense presented testimony that the decedent did not have the medical signs and symptoms of anaphylaxis and the doctor properly treated the patient for a seizure. Additionally, the defense disputed the cause of death in the autopsy report by proving the decedent had cocaine metabolites in her system which resulted in a drug toxicity and her death was ultimately caused by a cardiac arrhythmia and resulting cardiac arrest. The jury returned a verdict for the defense after deliberating for two hours and fifteen minutes.

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